The Elgar Companion to the Law and Practice of the World Health Organization

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ELGAR COMPANIONS TO THE LAW AND PRACTICE OF THE UN AGENCIES AND BODIES

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10. The development and implementation of human rights law in WHO governance[1]

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Human rights are central to global health. Framing necessary freedoms and entitlements to realise justice under international law, human rights stand as an indispensable normative foundation of global health governance, offering universal legal standards by which to establish shared values and facilitate accountability. Health-related human rights have now been firmly established under international law, evolving since the birth of the United Nations (UN) to codify norms and principles over a wide range of determinants of health. Following from the development of international human rights law to advance public health, global governance institutions have supported the implementation of human rights through institutional action. The World Health Organization (WHO) has thus provided an institutional basis to implement human rights in global governance for public health. While not a formal duty bearer under international human rights treaties, WHO has come to assume organisational responsibilities for realising international human rights law – in both the mission it carries out and the way in which it carries out that mission. By mainstreaming human rights norms and principles in its policies, programmes, and practices, WHO has sought to integrate human rights as a framework for global health governance.

Chronicling the evolution of human rights in WHO governance, this chapter examines WHO's institutional contributions to human rights in global health. Section 10.1 presents the post-war legal debates that gave rise to both international health governance and human rights law, establishing WHO's expansive public health mandate as a basis to realise health as a human right. Upon this legal foundation for a human right to health, Section 10.2 addresses the political evolution of WHO efforts to develop, implement, and operationalise human rights in public health. Recognising the limitations of this evolution, Section 10.3 analyses how past political struggles have continued to challenge WHO efforts to mainstream human rights in the WHO Secretariat. Section 10.4 examines contemporary efforts to mainstream human rights alongside gender and equity, complementing WHO's programme-specific rights-based initiatives. These contemporary efforts have sought to revitalise WHO's human rights leadership, and Section 10.5 analyses how the right to health has proven a political catalyst to advance international support for universal health coverage. As the world faced a new pandemic threat, Section 10.6 considers how WHO's leadership looked to human rights to galvanise global solidarity in the unprecedented COVID-19 response, with human rights advocacy shaping post-pandemic global health law reforms. Despite continuing challenges to human rights advancements in global health law, this chapter concludes in Section 10.7 that WHO

[1] The authors are grateful to Meredith Dockery, Tsion Ghedamu, and Nikky Soni for their thoughtful research assistance on the history of human rights in WHO governance and to Paul Hunt, Rajat Khosla, Rebekah Thomas, and Senait Fisseha for their insightful comments on previous drafts of this chapter.

remains central to advancing human rights through global health governance, yet this future remains uncertain as populist governments increasingly challenge public health, human rights, and global institutions.

10.1 FOUNDATIONS OF HUMAN RIGHTS IN WHO GOVERNANCE

WHO's human rights authority is founded upon its Constitution. Born out of the horrors of World War II, the 1945 UN Charter elevated human rights as a central pillar of the post-war international system. With the UN empowered to "make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all",[2] States worked within the UN system to establish human rights as a formal legal basis to advance principles of justice.[3] Concurrently elevating health within the UN, State representatives established WHO as an international organisation and UN specialised agency, with the 1946 WHO Constitution serving as the first international treaty to conceptualise a human right to health.[4]

10.1.1 WHO Constitution Declares a Human Right to Health

Establishing this new post-war health organisation, the UN's June–July 1946 International Health Conference in New York developed the proposed WHO Constitution pursuant to the UN Charter. State representatives sought to meet a pressing post-war imperative to facilitate international health cooperation through international health governance, thereby subsuming under the WHO Constitution all the responsibilities of predecessor health organisations: the Health Organization of the League of Nations, the *Office International d'Hygiene Publique* (OIHP), and the Health Division of the United Nations Relief and Rehabilitation Administration (UNRRA).[5] As States created what would be referred to as a "Magna Carta of health",[6] international health governance was "extended from the negative aspects of public health – vaccination and other specific means of combating infection – to positive aspects, i.e. the improvement of public health by better food, physical education, medical care, health insurance, etc".[7]

WHO's constitutional framework would establish a human rights foundation for WHO authority to direct international action for public health. Discussions during the drafting of

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[2] UN Charter 1945, Art 62; Charter of the United Nations (San Francisco, 26 June 1945), 3 Bevans 1153, 59 Stat 1031, TS No 993, entered into force 24 October 1945.

[3] Jack Donnelly, *Universal Human Rights in Theory and in Practice* (Cornell University Press 2003).

[4] Benjamin Mason Meier and Alexandra Finch, 'Seventy-five Years of Global Health Lawmaking under the World Health Organization: Evolving Foundations of Global Health Law Through Global Health Governance' (2024) 1 Journal of Global Health Law 26.

[5] James A Doull, 'Nations United for Health' in James S Simmons (ed), *Public Health in the World Today* (Harvard University Press 1949) 317.

[6] Thomas Parran, 'Chapter for World Health' (1946) 61 Public Health Reports 1265.

[7] Andrija Stampar, 'Suggestions Relating to the Constitution of an International Health Organization' (1949) 9 WHO Official Records, Annex.

the Constitution explicitly recognised "the right to health as one of the fundamental rights to which every human being, without distinction of race, sex, language or religion, is entitled".[8] Drawing from debates on the meaning of a right to health, States opened the preamble of the WHO Constitution under the unprecedented declaration that "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition", defining health expansively to include "a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity".[9]

The final wording of the WHO Constitution – avoiding the express phrase "right to health" – was seen as a compromise to avoid the legal and economic obligations at stake in explicitly recognising an individual right to health while States were still rebuilding their health systems after the war. Yet, with State representatives believing that they were creating the conceptual framework for an entirely new human right, this preambular language further declared that "governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures".[10] Under such far-reaching rights and responsibilities for medical care and underlying determinants of health, even if too vague to offer any meaningful operationalisation, the WHO Constitution was seen to "represent the broadest and most liberal concept of international responsibility for health ever officially promulgated",[11] encompassing the aspirations of the medical community to heal a world torn apart by war.

10.1.2 WHO Efforts to Frame Human Rights for Health in a Post-War World

This human rights authority within WHO came to be supported by human rights developments under the nascent UN system. Drawing from international negotiations to develop the WHO Constitution, the UN General Assembly proclaimed the 1948 Universal Declaration of Human Rights (UDHR) as "a common standard of achievement for all peoples and all nations",[12] framing within it a set of interrelated social protections by which

> [e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widow-hood, old age or other lack of livelihood in circumstances beyond his control.[13]

Including both the fulfilment of necessary medical care and the realisation of underlying determinants of health, this expansive UDHR vision of health-related rights reflected emerging

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[8] WHO, 'Draft of "preamble" to the convention of the World Health Organization (submitted by the sub-committee): Minutes of the technical preparatory committee for the International Health Conference held in Paris from March 18 to April 5' (1946) doc E/H/PC/W/2 Annex 10, 61.

[9] Constitution of the World Health Organization (New York, 22 July 1946) 14 UNTS 185, entered into force 7 April 1948.

[10] ibid.

[11] Charles Allen, 'World Health and World Politics' (1950) 4 International Organization 27, 30.

[12] UN General Assembly, Universal Declaration of Human Rights (Res. 217 A (III), preamble) (10 December 1948).

[13] ibid, Art 25.

national welfare policies and prevailing social medicine discourses as a basis for public health systems.[14]

The WHO and the UDHR both came into existence in 1948, and there was great promise that these two institutions would complement each other, with WHO – like all UN specialised agencies – advancing human rights in its policies and programmes. As States worked through the UN Commission on Human Rights to develop human rights treaty law, the WHO Secretariat played an active role in elaborating human rights obligations for public health. WHO's first Director-General, Brock Chisholm, welcomed "opportunities to co-operate with the Commission on Human Rights in drafting international conventions, recommendations and standards with a view to ensuring the enjoyment of the right to health", recognising that "the whole programme approved by the World Health Assembly represents a concerted effort on the part of the Member States to ensure the right to health".[15]

In structuring the development of health-related human rights obligations in the UN Commission on Human Rights, the WHO Secretariat advocated in 1951 that the codification of a right to health under international law should reflect state commitments in the WHO Constitution, emphasising: (1) a positive definition of health promotion, (2) the importance of social measures as underlying determinants of health, (3) governmental responsibility for health provision, and (4) the role of health ministries in creating systems for the public's health.

> Every human being shall have the right to the enjoyment of the highest standard of health obtainable, health being defined as a state of complete physical, mental and social well-being.
>
> Governments, having a responsibility for the health of their peoples, undertake to fulfil that responsibility by providing adequate health and social measures.
>
> Every Party to the present Covenant shall therefore, so far as it [sic] means allow and with due allowance for its traditions and for local conditions, provide measures to promote and protect the health of its nationals, and in particular:
>
> - to reduce infant mortality and provide for healthy development of the child;
> - to improve nutrition, housing, sanitation, recreation, economic and working conditions and other aspects of environmental hygiene;
> - to control epidemic, endemic and other diseases;
> - to improve standards of medical teaching and training in the health, medical and related professions;
> - to enlighten public opinion on problems of health;
> - to foster activities in the field of mental health, especially those affecting the harmony of human relations.[16]

These WHO proposals in the development of human rights law survived initial objections from the Cold War superpowers, yet there were vigorous debates among State representatives in both the WHO Executive Board and the UN Commission on Human Rights on the

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[14] UN, *These Rights and Freedoms* (UN Department of Public Information 1950).

[15] Brock Chisholm, 'Letter from Brock Chisholm, Director-General, WHO, to H. Laugier, Assistant Secretary-General, U.N' (1951) (on file with authors).

[16] United Nations ECOSOC, Seventh Session 27 April 1951 'Commission on Human Rights' (27 April 1951) UN doc E/CN.4/AC.14/2/Add.4.

expansiveness of such public health commitments under international law.[17] Notwithstanding these international divisions in political debates on human rights, the WHO Secretariat received early support from its Executive Board to take a leadership role in the UN's efforts to develop the legal obligations of the right to health.[18]

10.2 EVOLVING WHO CONTRIBUTIONS TO HEALTH AND HUMAN RIGHTS

This political support for WHO leadership in developing human rights would not last. Abandoning its early leadership in advancing the right to health, the WHO Secretariat neglected human rights debates during crucial years in the development of health-related rights under international law, projecting itself as a 'technical organisation' that did not address 'legal rights', and squandering opportunities through the 1960s for WHO leadership in the evolution of rights-based approaches to health. Where WHO neglected human rights development, it did so to the detriment of public health. As WHO sought to reclaim the institutional authority of the right to health in the 1970s, its past neglect of human rights codification left it without the international legal obligations necessary to implement human rights through primary health care. Yet, amidst the human rights violations of the early AIDS response, WHO Secretariat staff in the 1980s would again come to see the need to protect human rights to promote public health, shaping the current movement for 'health and human rights'.

10.2.1 WHO Neglect of the Right to Health under International Law

WHO was set to play a defining role in translating the aspirational public health language of the 1948 UDHR into the binding legal obligations of the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR), but the political divisions of the Cold War led WHO to reposition itself as a purely technical organisation, focusing on medical interventions and disease eradication programmes to the detriment of rights advancement. The Cold War superpowers held sharply divergent positions on human rights – with the United States firmly opposed to a human right to health[19] – and this Cold War divide led WHO to avoid debates on health-related human rights.[20] Following a 1953 shift in WHO's Secretariat leadership and an ensuing reform of WHO's health priorities, WHO abandoned the evolution of human rights under international law and turned its attention to technical assistance through its regional

[17] Benjamin Mason Meier, 'Global Health Governance and the Contentious Politics of Human Rights: Mainstreaming the Right to Health for Public Health Advancement' (2010) 46 (1) Stanford Journal of International Law 1.

[18] WHO Executive Board, 'Collaboration with the Commission on Human Rights' (1951) WHO doc EB8/39.

[19] Benjamin Mason Meier and Lance Gable, 'US Efforts to Realise the Right to Health Through the Patient Protection and Affordable Care Act' (2013) 13 Human Rights Law Review 167.

[20] MW Cranston, *What Are Human Rights* (Taplinger 1973).

offices, projecting itself as a "technical organisation"[21] that avoided "social questions"[22] and saw human rights as "beyond the competence of WHO".[23] Under the leadership of Director-General Marcolino Gomes Candau, the WHO Secretariat repeatedly declared throughout the late 1950s and early 1960s that it was not "entrusted with safeguarding legal rights".[24]

WHO sought throughout this period to declare its technical health efforts to be "non-political", believing that avoiding political engagement with human rights would keep WHO from being challenged by its Member States.[25] Approaching health through an exclusively medical lens,[26] this institutional conservatism toward legal engagement[27] allowed WHO to justify its "timidity" toward human rights,[28] even as other UN specialised agencies continued to develop health-related human rights within their respective spheres of competence.[29] With WHO retreating from its advancement of the right to health, the WHO Secretariat (1) declined to participate in the proceedings of the Commission on Human Rights,[30] (2) requested that the UN Secretariat not include a focus on health in its human rights summaries,[31] and (3) did not contest the ICESCR's limited codification of a right to health.[32] As the UN sought to codify a right to health in the 1966 ICESCR – while extending economic and social rights to a wide

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[21] Marcolina Gomes Candau, 'WHO – Prospects and Opportunities: The Road Ahead' (1954) 44 (12) American Journal of Public Health 1499, 1501.

[22] PM Kaul, 'Letter from WHO Director of the Division of External Relations and Technical Assistance P.M. Kaul to UN Deputy Under-Secretary for Economic and Social Affairs Martin Hill' (1956) (on file with authors).

[23] WHO Liaison Office, 'Memorandum from WHO Liaison Office with United Nations Director to WHO Deputy-Director General. Report on the Fifteenth Session of the Commission on Human Rights' (1959) (on file with authors).

[24] Marcolina Gomes Candau, 'Letter from M.G. Candau, Director-General, WHO, to Martin Hill, Deputy Under-Secretary for Economic and Social Affairs, U.N.' (1957) (on file with authors).

[25] Obijiofor Aginam, 'Mission (Im)possible? WHO as a "Norm Entrepreneur" in Global Health Governance' in Michael Freeman and Sarah Hawkes (eds), *Law and Global Health: Current Legal Issues Volume 16*, Current Legal Issues (online edn, Oxford Academic 2014).

[26] Mark J Volanksy, 'Achieving Global Health: a Review of the World Health Organization's Response' (2002) 10 (1) Tulsa Journal of Comparative and International Law 223.

[27] Allyn L Taylor, 'Making the World Health Organization Work: A Legal Framework for Universal Access to the Conditions for Health' (1992) 18 (4) American Journal of Law and Medicine 301.

[28] Mélanie Samson, 'Réflexions sur le rôle du droit dans la gouvernance de la santé Mondiale' in Emmanuel Cadeau, Eric Mondielly and François Vialla (eds), *Mélanges en l'honneur de Michel Belanger – Modernité du droit de la santé* (Les éditions hospitalières, coll. Mélanges 2015) 117, 123.

[29] Benjamin Mason Meier and Lawrence O. Gostin, *Human Rights in Global Health: Rights-Based Governance for a Globalizing World* (Oxford University Press 2018).

[30] WHO, 'Report on the Fourteenth Session of the Commission on Human Rights' (1958) (on file with authors).

[31] B Howell, 'Memorandum from B. Howell, WHO, to M.P. Bertrand, WHO (1958) Periodic Reports on Human Rights. Notes of Conversation with Mrs. Bruce of the U.N. Department of Human Rights – 4 July 1958 ref N64/180/5' (on file with authors).

[32] John P. Humphrey, 'Memorandum from John P. Humphrey, Director, Division of Human Rights, U.N., to Philippe de Seynes, Under-Secretary for Economic and Social Affairs, U.N. 747th Meeting of the Third Committee' (1957) (on file with authors).

range of determinants of health – it did so largely without WHO's institutional contributions, as the WHO leadership remained firmly tethered to the position that public health practitioners should not engage in political debates.

With WHO walking away from its early efforts to develop an expansive international legal language for underlying determinants of health, WHO's absence in these human rights debates would allow State efforts to undermine health-related human rights obligations to go unchallenged. The limited health obligations of the ICESCR reflected this WHO neglect, with States replacing specific language on the realisation of "complete" health and encompassing determinants of health with an ambiguous goal of realising the "highest attainable standard" of health.[33] Without legal staff to engage in international legal debates, the WHO Secretariat sought merely to lessen its institutional responsibilities to implement the right to health.[34] The UN would memorialise this WHO neglect of human rights in its 1968 review of human rights efforts across UN institutions, enumerating the expanding human rights activities undertaken by every UN specialised agency except WHO,[35] including in its summary of WHO efforts only a single perfunctory statement on the right to health: "Through its programme of technical assistance, WHO is helping countries achieve the objectives set forth in the preamble to its constitution, and thus the full range of its activities are relevant to human rights by assisting countries to make a reality of their people's right to health".[36] Yet, with WHO recognising later that year that "people are beginning to ask for health, and to regard it as a right",[37] this neglect for international human rights norms and principles would soon turn to more active engagement, returning to the political promise of the right to health as a means to strengthen health systems.[38]

10.2.2 WHO Revitalises the Right to Health Leading Up to the Declaration of Alma-Ata

With rising political support from low- and middle-income countries in the early 1970s,[39] WHO came to see human rights advocacy as a moral and political basis on which to frame health policy, seeking to implement human rights for public health through "primary health care" – encompassing health care in addition to underlying social, political, and economic determinants of health.[40] WHO turned to human rights as a means to draw attention to

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[33] UN General Assembly, Res 2200A (XXI) (16 December 1966) Art 12.

[34] Frank Gutteridge, 'Memorandum from F. Gutteridge, Chief of the Legal Office, WHO, to Milton P. Siegel, Assistant Director-General, WHO' (1966) (on file with authors).

[35] UN Secretary-General, 'Measures and Activities Undertaken in Connection with the International Year for Human Rights' (1968) UN doc A/7195.

[36] United Nations, *The United Nations and Human Rights* (United Nations 1968).

[37] WHO, *The Second Ten Years of the World Health Organization* (World Health Organization 1968) ix.

[38] Steven LB Jensen, *The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values* (Cambridge University Press 2016).

[39] WHA, res 23/61 (1970).

[40] Socrates Litsios, 'A Programme for Research in the Organization and Strategy of Health Services' (World Health Organization Director General's Conference, Geneva, Switzerland, June 1969).

underlying determinants of health,[41] with Director-General Halfdan Mahler, elected by the World Health Assembly in 1973, seeking to expand WHO's institutional influence by redefining its health goals to reflect human rights standards.[42] The WHO Secretariat began reporting to the Commission on Human Rights and collaborating with the UN's human rights staff in 1974, extolling human rights obligations as a legal foundation for the achievement of health for all.[43] These human rights implementation efforts would expand as States moved towards the January 1976 entry into force of the ICESCR, with WHO focusing on implementation of the right to health under the ICESCR, confirming to UN agencies that "this provision is of primary importance from WHO's point of view, and the whole body of WHO activities is based on the right[s] and principles contained therein".[44]

Human rights consensus was rapidly developing within the UN on the essential determinants of health subsumed under the right to health.[45] In addressing these determinants of health through "primary health care", the WHO Secretariat would focus on accelerating social and economic development as a foundation to realise human rights for health.[46] This socio-economic approach to the right to health – drawn from human rights obligations in the WHO Constitution, subsequent international treaties, and budding international debates on a human right to development – would catalyse what WHO officials referred to as "the onset of the health revolution".[47] With expanded recognition of the coordinating role of WHO in implementing the right to health through international health governance,[48] there was growing agreement that WHO had the constitutional authority to elaborate human rights obligations for underlying determinants of health.[49]

To codify international consensus on the multisectoral policies needed to realise the right to health through primary health care, WHO and UNICEF convened the International Conference on Primary Health Care in September 1978. Taking place in Alma-Ata in the Soviet Union (in what is now Almaty, Kazakhstan), this conference brought together representatives of 134 national governments to frame a holistic view of health, looking to health-related rights as indivisible and seeking social justice across interconnected determinants of health.[50] The conference adopted the Declaration on Primary Health Care (a document that

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[41] Karl Evang, 'Human Rights: Health for Everyone' [1973] World Health 3.

[42] Halfdan Mahler, 'Born to Be Healthy: A message from Dr H. Mahler, Director-General of the World Health Organization' (1973) Reprinted in Secretary-General's progress report doc A/913.

[43] Thomas Adeoye Lambo, 'Letter from WHO Deputy Director-General T.A. Lambo to UN Under-Secretary-General for Political and General Assembly Affairs Bradford Morse' (1974) (on file with authors).

[44] WHO, 'Working Paper by WHO to the Inter-Agency Meeting on the Implementation of the Human Rights Covenants' (1976) World Health Organization 3.

[45] Theodore van Boven, 'The Right to Health: Paper Submitted by the United Nations Division of Human Rights' in René-Jean Dupuy (ed), *The Right to Health as a Human Right: Workshop, The Hague, 27–29 July 1978* (Sijthoff and Noordhoff 1979) 54.

[46] Osita C Eze, 'Right to Health as a Human Right in Africa' in Dupuy (n 45).

[47] Thomas Adeoye Lambo, 'Towards Justice in Health' [1979] World Health 2, 4.

[48] Claude-Henri Vignes, 'Droit à la santé et coordination' in Dupuy (n 45) 304.

[49] Henriette Roscam Abbing, *International Organizations in Europe and the Right to Health Care* (Kluwer 1979).

[50] Alfred Glenn Mower, *International Cooperation for Social Justice: Global and Regional Protection of Economic/Social Rights* (Greenwood Press 1985).

has come to be known as the Declaration of Alma-Ata), with Article I of the Declaration reaffirming the rights-based framing of the WHO Constitution:

> [H]ealth, which is a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity, is a fundamental human right and … the attainment of the highest level of health is a most important world-wide social goal whose realisation requires the action of many other social and economic sectors in addition to the health sector.[51]

Yet, in spite of this renewed proclamation of the right to health under WHO governance, the Declaration's international commitment to primary health care never took hold in national health policy. As the Declaration of Alma-Ata presented no legally binding human rights obligations,[52] scholars lamented in the ensuing years that "inadequate national commitment to the 'Health for All' strategy is at some level a reflection of the ineffectiveness of WHO's strategy of securing national dedication to the right to health".[53]

10.2.3 HIV/AIDS Highlights the Inextricable Linkages between Health and Human Rights

Even as States stepped back from implementing the right to health through primary health care, such rights-based standards endured in WHO's early HIV/AIDS response. With governments responding to the emergent threat of AIDS in the 1980s through infectious disease policies that marginalised affected populations – including compulsory testing, named reporting, travel restrictions, and coercive isolation or quarantine – civil and political rights were seen as a safeguard against intrusive public health infringements and a bond among HIV-positive activists.[54] The unfolding pandemic response would give rise to the modern "health and human rights" movement, as human rights resounded in HIV/AIDS advocacy throughout the world.[55] As the pandemic laid bare the inextricable linkages between individual freedoms and public health outcomes, WHO came to embrace human rights implementation in global health policy, viewing the rights-based approach to health as instrumental to its public health mandate.[56]

In this period of rising health fears and rights-based advocacy, Jonathan Mann's vocal leadership of the WHO Global Programme on AIDS (GPA) in the late 1980s provided a path to operationalise human rights in WHO governance.[57] WHO's rights-based approach to

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[51] WHO, 'Primary Health Care: Report of the International Conference of Primary Health Care' (Alma-Ata, USSR, 6–12 September 1978).

[52] Virginia Leary, 'Health, Human Rights and International Law' (1988) 82 American Society of International Law Proceedings 121, Art I.

[53] Allyn L Taylor, 'The World Health Organization and the Right to Health' (LLM thesis, Columbia Law School 1991) 42.

[54] Ronald Bayer, 'Public Health Policy and the AIDS Epidemic – An End to HIV Exceptionalism?' (1991) 324 New England Journal of Medicine 1500–1504.

[55] Lawrence O. Gostin, *Global Health Law* (Harvard University Press 2014).

[56] Benjamin Mason Meier and Florian Kastler, 'Development of Human Rights through WHO' in Meier and Gostin (n 29).

[57] Elizabeth Fee and Manon Parry, 'Jonathan Mann, HIV/AIDS, and Human Rights' (2008) 29 (1) Journal of Public Health Policy 54.

AIDS found support among non-governmental advocates and UN human rights officers, who worked closely with the WHO Secretariat to understand the risks for transmission, to reduce stigmatisation of affected populations, and to slow the spread of HIV.[58] Although human rights law had long recognised that infringements of individual rights are permissible – even necessary – to protect the public's health, GPA staff viewed respect for individual rights as a precondition for public health in the context of HIV prevention and control.[59] The GPA examined human rights violations as a key driver of the spread of the disease and sought to respond by implementing human rights in WHO programming – through strategies to combat discrimination, promote social equity, and support individual responsibility.[60] In leading this rights-based approach to HIV/AIDS across the UN, the GPA sought to "bring together the various organisations, particularly those organisations of the UN system and related organisations involved in human rights to discuss the relationship between AIDS, discrimination, and human rights".[61] Confirming WHO's global leadership in applying interconnected human rights to address intersectoral determinants of HIV, the UN General Assembly directed all UN agencies to assist in WHO's efforts, resolving "to ensure … a co-ordinated response by the United Nations system to the AIDS pandemic".[62]

WHO's 1987 Global Strategy for the Prevention and Control of AIDS solidified human rights principles as a basis for its leadership in global efforts to prevent HIV transmission and mitigate the impact of the pandemic. The Global Strategy focused on principles of non-discrimination and equitable access to care, stressing the need for public health programmes to respect and protect civil and political rights as a means to achieve the individual behaviour change necessary to prevent HIV.[63] With States upholding WHO's rights-based leadership to ensure international collaboration against this global threat, the World Health Assembly reaffirmed in May 1988 that "respect for [the] human rights and dignity of HIV-infected people, people with AIDS and members of population groups is vital to the success of national AIDS prevention and control programmes and of the global strategy".[64] Although the 1988 election of Director-General Hiroshi Nakajima came to diminish the GPA's ability to promote a rights-based approach to health – leading Jonathan Mann to resign in protest, leaving WHO's AIDS programmes in a state of disarray, and raising the need for a new international organisation,

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[58] Sofia Gruskin, Edward Mills and Daniel Tarantola, 'History, Principles, and Practice of Health and Human Rights' (2007) 370 The Lancet 449.

[59] Jonathan Mann and Manuel Carballo, 'Social, Cultural and Political Aspects: Overview' (1989) 3 AIDS s221–s223.

[60] Benjamin Mason Meier, Kristen Brugh and Yasmin Halima, 'Conceptualizing a Human Right to Prevention in Global HIV/AIDS Policy' (2012) 5 (3) Public Health Ethics 263.

[61] Johnathan Mann, 'Memorandum from GPA Coordinator J. Mann to Director-General H. Mahler' (1987) (on file with authors).

[62] UN General Assembly, 'Prevention and Control of Acquired Immune Deficiency Syndrome (AIDS)' (1987) UN doc A/RES/42/8 para 6.

[63] WHO, 'Global Strategy for the Prevention and Control of AIDS' (World Health Organization 1987).

[64] WHA, 'Avoidance of Discrimination in Relation to HIV-infected People and People with AIDS' (1988) WHA res 41.24 preamble.

UNAIDS[65] this focus on rights-based approaches to health would endure in the HIV/AIDS response and in WHO efforts to mainstream human rights in global health.

10.3 MAINSTREAMING HUMAN RIGHTS ACROSS WHO

Moving beyond HIV/AIDS, WHO embarked on a more systematic application of a range of health-related human rights to an array of public health threats. As human rights discourse flourished following the end of the Cold War, a political space opened in the 1990s for human rights advancements in international relations, with the UN embracing human rights as a basis for global governance. WHO answered the UN call to re-engage with human rights in global health governance, employing human rights with mixed success to elevate rights-based approaches in WHO policies and programmes, to advance health across the UN human rights system, and to frame Member State responsibilities under international health law.

10.3.1 UN Launches Mainstreaming Initiatives

With the Cold War coming to an end at the start of the 1990s, the 1993 World Conference on Human Rights declared a new post-Cold War consensus on human rights. The resulting Vienna Declaration and Programme of Action sought to end the divide between civil and political rights and economic, social, and cultural rights that had dominated human rights debates throughout the Cold War, declaring that all human rights would be seen as "universal, indivisible and interdependent and interrelated" and that they should be treated "on the same footing, and with the same emphasis".[66] Promoting these interdependent rights across the UN system, the Vienna Declaration called for increased human rights coordination, urging "all United Nations organs, bodies and the specialised agencies whose activities deal with human rights to cooperate in order to strengthen, rationalise and streamline their activities".[67] The Vienna Declaration thus took human rights out from under the exclusive purview of the UN human rights system and established "the foundation for a holistic and integrated approach to human rights not only by the human rights machinery but also by the entire United Nations system".[68]

With this clarification of organisational responsibilities for human rights, UN Secretary-General Kofi Annan called on all UN programmes, funds, and specialised agencies in 1997 to "mainstream" human rights throughout their global governance efforts.[69] Mainstreaming human rights in global governance would require that organisations incorporate human rights

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[65] Laurie Garrett, *The Coming Plague: Newly Emerging Diseases in a World Out of Balance* (Penguin 1994).

[66] Vienna Declaration and Programme of Action (World Conference on Human Rights 1993) <https://www.ohchr.org/sites/default/files/vienna.pdf> accessed 31 December 2024.

[67] ibid, p II, para 1.

[68] Mary Robinson, 'Five-Year Review of the Implementation of the Vienna Declaration and Programme of Action: Interim Report of the United Nations High Commissioner for Human Rights' (1998) UN doc E/CN.4/1998/104 para 23.

[69] UN Secretary-General, 'Renewing the United Nations: A Programme for Reform' (1997) UN doc A/51/950.

norms, standards, and principles into their policymaking practices, operational budgets, bureaucratic processes, and ultimately organisational culture.[70] Out of this mainstreaming mandate, UN institutions began to consider the implications of human rights for their work, adopting human rights policy statements and partnering with the new Office of the United Nations High Commissioner for Human Rights (OHCHR) in the development of rights-based programming.[71]

Yet although the UN Secretary-General repeatedly reaffirmed calls to mainstream human rights as a cross-cutting approach to all of the UN's principal programmes and activities, there remained a lack of agreement on the meaning of 'mainstreaming', as UN organisations mainstreamed human rights in vastly different ways, giving rise to institutional inconsistencies in the implementation of universal rights. In seeking to harmonise these organisational efforts, the United Nations Development Group (UNDG), a coalition of 32 UN entities (including WHO), adopted a Statement of Common Understanding among United Nations Agencies on the Human Rights-Based Approach to Development Cooperation.[72] This 'Common Understanding' offered clarity on the practical implications of human rights standards for UN development programmes, as WHO sought to mainstream human rights under a rights-based approach to health.

10.3.2 Early WHO Efforts to Advance a Rights-Based Approach to Health

Refocusing global health governance, these UN efforts reshaped the policies, programmes, and practices of WHO. With Director-General Gro Harlem Brundtland seeking to re-establish WHO as "the world's health conscience",[73] human rights mainstreaming provided a path to increase awareness and understanding of the application of the right to health. WHO increased its efforts to advance mainstreaming in 1999 by enlisting its first human rights advisor, who began work to develop a WHO Strategy on Health and Human Rights.[74] This new human rights advisor sought to solidify the place of human rights among WHO Secretariat programmes through a series of informal consultations, which aimed to engage WHO staff with outside human rights experts to develop rights-based programming.[75] By the early 2000s, the human rights advisor had created a WHO seminar series on Health, Ethics, and Human

[70] William O'Neill and Vegard Bye, *From High Principles to Operational Practice: Strengthening OHCHR Capacity to Support UN Country Teams to Integrate Human Rights in Development Programming* (Office of the High Commissioner for Human Rights 2002).

[71] Benjamin Mason Meier and Lawrence O. Gostin, 'Framing Human Rights in Global Health Governance' in Meier and Gostin (n 29).

[72] United Nations Development Group, 'The Human Rights Based Approach to Development Cooperation Towards a Common Understanding among UN Agencies' (2003) <https://unsdg.un.org/resources/human-rights-based-approach-development-cooperation-towards-common-understanding-among-un> accessed 31 December 2024.

[73] Kelly Lee, 'The Pit and the Pendulum: Can Globalization Take Health Governance Forward?' (2004) 47 (2) Development 11, 13.

[74] Daniel Tarantola, 'Building on the Synergy between Health and Human Rights: A Global Perspective' (2000) François-Xavier Bagnoud Center for Health and Human Rights Working Paper no 8.

[75] H Nygren-Krug, 'The Right to Health: From Concept to Practice' in LO Gostin, SP Marks, and JM Zuniga (eds), *Advancing the Human Right to Health* (Oxford University Press 2013) 39.

Rights, developed tools to strengthen WHO engagement with UN human rights treaty bodies, published trainings to increase understanding of human rights among WHO staff,[76] and provided human rights technical support to WHO programme offices.[77] This need for human rights capacity-building among WHO staff led to the 2003 creation of a small Health and Human Rights Team inside the WHO Secretariat, establishing a focal point within WHO for consideration of international human rights law, engagement with the UN human rights system, and collaboration with organisations, academics, and advocates at the intersection of health and human rights.[78]

In parallel with these mainstreaming efforts across the WHO Secretariat, human rights flourished within select programme clusters,[79] with WHO staff advancing human rights initiatives in technical efforts for, among other programmes, reproductive health; maternal, child, and adolescent health; and mental health. For example, WHO's Special Programme on Human Reproduction formally established a Gender Advisory Panel in the late 1990s (later expanding its remit to the Gender and Rights Advisory Panel) to provide an institutional review of all aspects of reproductive health and research with attention to gender and rights.[80] The programme subsequently appointed its own Human Rights Advisor, who supported the mainstreaming of human rights in: technical guidance;[81] a toolkit that draws on human rights standards to strengthen government efforts;[82] and a database of global abortion laws and policies to support greater transparency and State accountability for human rights.[83] Similarly, a Human Rights Advisor on Child Health supported the application of human rights standards in WHO technical guidance. To introduce human rights into mental health policy, planning, legislation, and service development, the Mental Health Policy and Service Development Unit was established in 2000, and with the 2006 adoption of the UN Convention on the Rights of Persons with Disabilities (CRPD), WHO's mental health programming became aligned with CRPD standards – to promote policy, law, and services that prohibit coercive practices, respect legal capacity, and safeguard rights to liberty, community inclusion, and participation.[84] While capacity to mainstream human rights throughout the entire WHO Secretariat remained limited, with only a small number of human rights advisors in select programmes,

[76] WHO, '25 Questions and Answers on Health and Human Rights' (2002) Health and Human Rights Publications Series, Issue No 1.

[77] WHO, 'Correspondence between HHR Team and WHO Staff' (4 April 2000) (on file with authors).

[78] Helena Nygren-Krug, 'Health and Human Rights at the World Health Organization' (2004) 1 (7) Saúde e Direitos Humanos.

[79] WHO, 'Health and Human Rights Newsletter' (no 3, World Health Organization 2010).

[80] WHO, 'Q&A with Jane Cottingham' <https://www.graduateinstitute.ch/sites/internet/files/2025-09/Jane-Cottingham-Transcript-Oral-History-Archive.pdf> accessed 15 December 2024.

[81] WHO, 'Safe Abortion: Technical and Policy Guidance for Health Systems' (2nd edn, 2012).

[82] WHO, 'Reproductive, Maternal, Newborn and Child Health and Human Rights: A Toolkit for Examining Laws, Regulations and Policies' (2014) <https://iris.who.int/bitstream/handle/10665/126383/9789241507424_eng.pdf?sequence=1> accessed 31 December 2024.

[83] Brooke Ronald Johnson Jr, Vinod Mishra, Antonella Francheska Lavelanet, Rajat Khosla and Bela Ganatra, 'A Global Database of Abortion Laws, Policies, Health Standards and Guidelines' (2017) 95 Bulletin of the World Health Organization 542–544.

[84] Michelle Funk and Natalie Drew, 'WHO's QualityRights Initiative: Transforming Services and Promoting Rights in Mental Health' (2020) 22 (1) Health and Human Rights Journal 69–75.

these WHO programmes continued to apply international human rights norms and principles in technical guidance and Member State support.

Extending these internal Secretariat efforts to advance human rights in global health governance, WHO correspondingly sought to advance global health in human rights governance through the UN human rights system. WHO contributed public health expertise to human rights treaty bodies, with the close collaboration between WHO and the UN Committee on Economic, Social and Cultural Rights leading to the adoption in 2000 of General Comment 14,[85] which has served as an authoritative interpretation of the right to health under the ICESCR, codifying human rights standards that WHO first developed decades earlier in the Declaration of Alma-Ata. General Comment 14, alongside comments and recommendations adopted by other human rights treaty bodies during this time,[86] provided a UN framework for health-related human rights as WHO sought to interpret and mainstream human rights across its institutional programming. The 2002 creation of a UN special procedures mandate for a special rapporteur on the right to health[87] provided additional WHO collaborations to advance health through human rights governance. WHO began to provide substantive expertise to support the new UN Special Rapporteur on the right to health in drafting thematic reports, with WHO country offices providing administrative and substantive support for the Special Rapporteur's official country missions.[88] In turn, the Special Rapporteur supported WHO in advancing human rights mainstreaming and partnered with select programme clusters (in the Secretariat, regional, and country offices) to advance rights-based approaches to neglected diseases, mental health, child and adolescent health, essential medicines, and sexual and reproductive health.[89]

This expanding operationalisation of WHO's normative authorities provided a basis in the early 2000s to develop international health law instruments that could contribute to the promotion of the right to health, with both the 2003 Framework Convention on Tobacco Control (FCTC), as discussed in the chapter by Delf, and the 2005 revision of the International Health Regulations (IHR) recognising the human rights foundation of global health law.[90] Where the

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[85] CESCR (Committee on Economic, Social and Cultural Rights), 'General Comment No. 14: The Right to the Highest Attainable Standard of Health' (2000) E/C.12/2000/4 Art 12.

[86] CEDAW (Committee on the Elimination of All Forms of Discrimination Against Women), 'General Recommendation No. 24: Women and Health' (1999) A/54/38/Rev.1, chap. I; CESCR (Committee on Economic, Social and Cultural Rights), 'General Comment No. 14: The Right to the Highest Attainable Standard of Health' (2000) E/C.12/2000/4; CRC (Committee on the Rights of the Child), 'General Comment No. 3: HIV and the Rights of the Child' (2002) CRC/GC/2003/3; CRC (Committee on the Rights of the Child), 'General Comment No. 4: Adolescent Health and Development in the Context of the Convention on the Rights of the Child' (2002) CRC/GC/2003/4.

[87] UNCHR (United Nations Commission on Human Rights), 'The right of everyone to the enjoyment of the highest attainable standard of physical and mental health' (2002) Office of the High Commissioner for Human Rights UN Res 2002/31.

[88] Paul Hunt, 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' (2008) doc A/63/263.

[89] Paul Hunt, 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' (2007) doc A/HRC/4/28.

[90] Benjamin Mason Meier and William Onzivu, 'The Evolution of Human Rights in World Health Organization Policy and the Future of Human Rights through Global Health Governance' (2014) 128 Public Health 179.

WHO Constitution provided WHO with robust authorities to develop international health law, the FCTC provided the first opportunity for WHO to develop an international treaty, with the FCTC drawing from the WHO Constitution, ICESCR, and the Convention on the Rights of the Child (CRC) to develop "an evidence-based treaty that reaffirms the right of all people to the highest standard of health".[91] Although the IHR had been revised previously over the course of WHO's history, the 2005 revision of the IHR for the first time provided explicit protection of human rights, codifying that national efforts to respond to public health emergencies must be implemented "with full respect for the dignity, human rights and fundamental freedoms of persons".[92] These international legal developments, engaging WHO's normative functions to advance human rights, set a precedent for future regulatory action across its work with Member States.[93]

10.3.3 Human Rights Challenges in the WHO Headquarters

Yet despite the establishment of a Health and Human Rights Unit within the Secretariat Headquarters in Geneva, the development of human rights programming in select technical clusters, and the creation of human rights officer positions in regional headquarters and country offices, WHO's human rights mainstreaming efforts faced continuing challenges – resistance from technical staff, divisions in state support, and barriers from the Secretariat leadership. Although the right to health provides a crucial normative framework to address social determinants of health, human rights were largely absent from the landmark 2008 report of the WHO-established Commission on Social Determinants of Health,[94] even as the Commission's secretariat had recommended a human rights-based approach[95] and support was offered by the UN Special Rapporteur on the right to health.[96] Select Member States in the late 2000s continued to place pressure on WHO to reduce human rights in budgetary allocations, and without support from the Director-General, human rights officers faced isolation in WHO governance.[97] With human rights analysis pulled from WHO reports, the Health and Human Rights Unit came to be disconnected from the work of technical programmes and

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[91] WHO, Framework Convention on Tobacco Control, Foreword (2003).

[92] WHO, International Health Regulations (2005) Art 3. See also Stefania Negri, 'Communicable Disease Control' in Gian Luca Burci and Brigit Toebes (eds), *Research Handbook on Global Health Law* (Edward Elgar 2018) 265–302.

[93] Florian Kastler, *Le rôle normatif de l'Organisation mondiale de la santé* (Sorbonne Paris Cité 2016).

[94] Commission on Social Determinants of Health (CSDH), 'Closing the Gap in a Generation: Health Equity through Action on the Social Determinants of Health: Final Report of the Commission on Social Determinants of Health' (World Health Organization 2008).

[95] Orielle Solar and Alec Irwin, 'A Conceptual Framework for Action on the Social Determinants of Health: Discussion Paper for the Commission on Social Determinants of Health' (April 2007) <https://www.who.int/publications/i/item/9789241500852> accessed 31 December 2024.

[96] Paul Hunt, 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' (2005) UN doc A/60/348.

[97] Paul Hunt, 'Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' (2008) UN doc A/63/263.

national offices, as scholars and advocates criticised WHO programmes for their increasing departure from the path of human rights.[98]

In the absence of centralised support in the WHO Headquarters, the Secretariat's regional offices pursued starkly different approaches to, and levels of engagement with, human rights. Reflecting divergent legal and political commitments to human rights across regions, some regional offices paid limited attention to rights while others strengthened rights-based governance through concerted mainstreaming efforts. Within the Pan American Health Organisation (PAHO), for example, the regional human rights advisor developed a series of collaborations to mainstream human rights in technical programmes and built rights-based capacity within national offices, with PAHO Member States endorsing human rights as a guiding principle of the 2008–2012 PAHO Strategic Plan and adopting an unprecedented 2010 Resolution on Health and Human Rights – to support human rights mainstreaming in national health ministries and PAHO technical programmes.[99] This approach was rapidly replicated in the WHO Regional Office for Africa (AFRO), with the regional human rights advisor seeking to provide technical assistance to States to mainstream human rights in national health programmes, leading AFRO Member States to draw on the right to health in the African Charter on Human and People's Rights and the national constitutions of African States to adopt a 2012 AFRO Resolution on Health and Human Rights.[100]

In an effort to address human rights challenges in the Secretariat Headquarters and revitalise human rights among WHO staff, WHO's Assistant Director-General for Family, Women's and Children's Health appointed the former UN Special Rapporteur on the right to health as WHO's Senior Human Rights Advisor. Working together, they led a WHO study to examine empirical evidence on the impact of rights-shaped approaches to women's, children's, and adolescents' health, seeking to highlight the value of human rights to WHO's global health mission.[101] This study found that human rights contributed positively to select health outcomes in four country case studies (Brazil, Italy, Malawi, and Nepal), but the monograph faced a mixed reception within the WHO Secretariat, with scepticism among some WHO staff and public health scholars about its mixed-methods approach and selected health outcomes, leading some to question its conclusions on the impact of human rights in global health.

10.4 MAINSTREAMING GENDER, EQUITY, AND RIGHTS

As WHO faced continuing financial constraints in its global health efforts, the WHO Executive Board called on the Secretariat to find more efficient ways to mainstream its multiple

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[98] Kelly Lee, 'Understandings of Global Health Governance: The Contested Landscape' in Adrian Kay and Owain David Williams (eds), *Global Health Governance: Crisis, Institutions and Political Economy* (Palgrave Macmillan 2009) 27.

[99] Benjamin Mason Meier and Ana Ayala, 'The Pan American Health Organization and the Mainstreaming of Human Rights in Regional Health Governance' (2014) 42 (3) Journal of Law, Medicine and Ethics 356.

[100] African Regional Office, 'Resolution: Health and Human Rights: Current Situation and Way Forward in the African Region' (World Health Organization 2012) WHO doc AFR/RC62/R6.

[101] Flavia Bustreo and others, *Women's and Children's Health: Evidence of Impact of Human Rights* (World Health Organization 2013).

cross-cutting priorities, leading Director-General Margaret Chan to shift WHO human rights staff and resources under a combined gender, equity, and rights approach to health – seeking, as she described, "to achieve a WHO in which each staff member has the core value of gender, equity and human rights in his/her DNA".[102] The 2012 establishment of WHO's Gender, Equity, and Rights (GER) Team supported WHO in advancing human rights as a foundation to address global health, with WHO: employing a rights-based framework to support gender, equity, and human rights mainstreaming; incorporating human rights in efforts to monitor the Sustainable Development Goals (SDGs); and engaging with international human rights mechanisms to facilitate human rights accountability in global health.[103]

10.4.1 Conceptualising a GER Approach to Global Health

The decision to bring gender, equity, and human rights together has had important repercussions for the way that human rights mainstreaming has been undertaken within WHO. Through the GER Team, the WHO Secretariat developed a 'conceptual framework' to justify the merger of gender, equity, and human rights and support integrated mainstreaming efforts in the WHO Headquarters, throughout the regional secretariats, and across country offices. However, with the WHO staff predominantly comprised of medical and public health experts, whose focus is orientated towards WHO's core technical functions rather than legal accountability, the GER Team initially sought to implement a rights-based approach without explicit reference to international legal standards.[104] Addressing gender, equity, and rights together was thus seen to provide multiple entry points for advancing human rights norms and principles in public health programming while navigating the resistance of technical staff to legal discourses.

WHO's efforts to mainstream these three interconnected priorities laid a foundation for the programmatic operationalisation of rights-based approaches across the organisation. To achieve this operationalisation, WHO developed a 'GER Roadmap for Action'[105] to guide the implementation of human rights in WHO programming through:

1. Institutional guidance: In providing guidance for integrating human rights across WHO's programmes and institutional mechanisms, the GER Team sought to: raise staff awareness of GER objectives and requirements through technical training; propose minimum 'GER Criteria' to strengthen monitoring of mainstreaming efforts; incorporate human rights considerations into core WHO functions (such as norm-setting and guideline development, evaluation processes, and communications); and integrate equity, gender, and human rights into programme area workplans and budgets;[106]

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[102] WHO, *World Health Assembly 2012: Gender, Equity and Human Rights at the Core of the Health Response* (World Health Organization 2012).

[103] Rebekah Thomas and Veronica Magar, 'Mainstreaming Human Rights across WHO' in Meier and Gostin (n 29) 133.

[104] ibid.

[105] WHO, *Integrating Equity, Gender, Human Rights and Social Determinants into the Work of WHO: Roadmap for Action, 2014–2019* (World Health Organization 2015).

[106] Flavia Bustreo and others, 'The Future of Human Rights in WHO' in Meier and Gostin (n 29) 155.

2. Evidence and data collection: In tracing health inequalities through disaggregated data, the GER Team: developed health inequality monitoring tools to assess policy impacts; published reports on inequalities across different health areas in low- and middle-income countries; and provided qualitative "barrier analysis" of policy obstacles to human rights;[107] and
3. Country support: In developing a toolkit and national review process to support Member State governments and other national partners, the GER Team assessed equity, gender, and human rights in national health policies, programmes, and plans, reinforcing WHO country office capacity to promote gender, equity, and human rights.[108]

These pillars of the GER Roadmap would seek to mainstream human rights, with WHO efforts emphasising the need for public health law reforms, prioritising health equity for marginalised populations, and developing accountability mechanisms to monitor health outcomes. WHO additionally sought to incorporate human rights into its technical guidelines processes, making "non-discrimination, human rights and socio-cultural acceptability" core considerations in formulating WHO recommendations.[109]

To establish criteria by which to assess the operationalisation of human rights mainstreaming across the WHO Secretariat, the GER Team developed human rights 'markers' to monitor and review individual staff action on human rights.[110] These assessments provided a crucial tool in facilitating transparency and oversight in human rights mainstreaming. However, while these assessments highlighted some success for mainstreaming in the Secretariat headquarters, they also recognised continuing challenges in the vertical integration of these human rights mainstreaming tools across WHO's regional and country offices. Even as WHO transitioned the GER Team into a Department of Gender Equality, Human Rights and Health Equity (GRE) within the Director-General's Office, the continuing work of the GRE Department would see uneven human resources dedicated to human rights between regions and often limited capacity at the country level.

10.4.2 UN Partnerships for Rights-Based Approaches

Complementing its internal mainstreaming work, WHO supported international human rights advancements and UN human rights partnerships, both to strengthen its own work to advance a rights-based approach to health and to promote human rights in realising global health agendas. These partnerships under the UN Sustainable Development Goals (SDGs) facilitated engagement with UN human rights bodies and furthered commitments to human rights under WHO's leadership.

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[107] Thomas and Magar (n 103).

[108] WHO, *The Innov8 approach for reviewing national health programmes to leave no one behind* (World Health Organization 2016) <https://www.who.int/publications/i/item/9789241511391> accessed 31 December 2024.

[109] EA Rehfuess, JM Stratil, IB Scheel and others, 'The WHO-INTEGRATE Evidence to Decision Framework Version 1.0: Integrating WHO Norms and Values and a Complexity Perspective' (2019) 4 BMJ Global Health e000844.

[110] Thomas and Magar (n 103).

Drawing from the grounding of the SDGs in international human rights law, WHO sought to meet the SDGs by protecting and promoting human rights. WHO thus played a coordinating role in developing a set of higher-level health goals to create innovative accountability measures.[111] To advance commitments under the 2030 Agenda for Sustainable Development – commitments to human rights, to 'Leave No One Behind', and to 'follow-up and review' of progress – WHO called for more widespread disaggregation of SDG data on grounds of sex, age, income/wealth, education, race, ethnicity, migratory status, disability, location, and other status, as well as for the strengthening of health information systems required to support country reviews and international follow-up and review processes envisaged by the SDGs.[112]

To increase engagement with human rights, the UN Human Rights Up Front Initiative, later subsumed into the SDGs' principle of Leave No One Behind (LNOB), provided a basis for focusing on human rights and gender in coordinated efforts with OHCHR. Beginning in 2016, WHO and OHCHR co-hosted the High-Level Working Group for the Health and Human Rights of Women, Children and Adolescents, convened to generate high-level political support, at both national and international levels, for the implementation of the human rights-related measures called for under the UN Secretary-General's Global Strategy on Women's, Children's and Adolescents' Health (2015–2030). Through this LNOB principle, human rights have been embedded in the Global Action Plan for Healthy Lives and Well-being for All, an initiative bringing together 12 multilateral health, development, and humanitarian agencies to support countries in accelerating progress towards the health-related SDGs.[113]

10.4.3 Accountability for Human Rights in Global Health

Supporting these UN partnerships – with OHCHR, treaty monitoring bodies, and special procedures mandate holders – the GER Team sought to overcome WHO's past human rights hesitation and engage with the UN Human Rights Council's Universal Periodic Review (UPR).[114] Established in 2006, the UPR reviews every UN Member State's human rights record through collaborative discussions between the State under review and other Member States.[115] WHO has remained committed to sustaining collaborations with the UN human rights system through the UPR, exploring how the UPR can contribute to global health advancements and how WHO can contribute global health data to facilitate human rights accountability.[116] WHO has enlisted academic partners to research the UPR, revealing the prominence of health

[111] Remco Van de Pas and others, 'Global Health Governance in the Sustainable Development Goals: Is It Grounded in the Right to Health?' (2017) 1 (1) Global Challenges 47.

[112] WHO, *World Health Statistics 2016: Monitoring Health for the SDGs* (World Health Organization 2016).

[113] WHO, Global Action Plan for Healthy Lives and Well-being for All (2020).

[114] Bustreo and others (n 106).

[115] Judith Bueno de Mesquita, Connor Fuchs and Dabney P. Evans, 'The Future of Human Rights Accountability through the Universal Periodic Review' in Meier and Gostin (n 29) 537.

[116] Judith Bueno de Mesquita, Rebekah Thomas and others, 'Monitoring the Sustainable Development Goals through Human Rights Accountability Reviews' (2018) 96 World Health Bulletin 627.

within the UPR's state recommendations and affirming the need for strategic WHO engagement with the UPR to promote accountability for the right to health throughout the world.[117]

WHO's engagement with human rights accountability procedures has extended beyond the UN human rights system, catalysing the development of rights-based accountability procedures for health among international organisations in the context of global development commitments and strategies. Responding to a request from the UN Secretary-General to determine institutional arrangements for global reporting, oversight, and accountability under the Global Strategy for Women's and Children's Health (2010–2015), a strategy which itself gave significant attention to human rights, WHO established the Commission on Information and Accountability for Women's and Children's Health (CoIA). The CoIA brought human rights to the forefront of global health accountability. Moving beyond traditional global health monitoring arrangements, the CoIA advocated a rights-based conceptualisation of accountability, comprising monitoring, review, and remedial action. This rights-based approach to accountability was subsequently operationalised at the global level through the establishment of the Independent Expert Review Group, which sought to review the extent to which duty bearers were fulfilling their commitments under the Global Strategy and implementing CoIA's recommendations.[118] These accountability institutions expanded global efforts to meet the Every Woman Every Child Global Strategy for Women's, Children's and Adolescents' Health (2016–2030), overseen by the Independent Accountability Panel – appointed by the UN Secretary-General, hosted by WHO's Partnership for Maternal, Newborn and Child Health (PMNCH), and reporting to the Every Woman Every Child High-Level Steering Group.

By integrating human rights into global health accountability mechanisms, these WHO monitoring and review efforts have provided a basis to ensure the realisation of human rights in global health.[119] Strengthening global efforts to eliminate unsafe abortion, for example, WHO joined with five other international agencies in 2017 to launch a Global Abortion Policies Database. This database brings together: country-level data on specific abortion laws and policies, selected sexual and reproductive health indicators, and human rights treaties and UN human rights system reports on abortion. With restrictive abortion laws associated with unsafe abortion and higher levels of maternal mortality, the development of this database sought to promote greater transparency of abortion laws and policies and facilitate state accountability for women's and girls' health and human rights.[120]

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[117] Human Rights Centre Clinic, University of Essex and World Health Organization, *Advancing the Right to Health through the Universal Periodic Review* (WHO 2019).

[118] Paul Hunt, 'SDGs and the Importance of Formal Independent Review: An Opportunity for Health to Lead the Way' (2015) Health and Human Rights Journal <https://www.hhrjournal.org/2015/09/02/sdg-series-sdgs-and-the-importance-of-formal-independent-review-an-opportunity-for-health-to-lead-the-way/> accessed 31 December 2024.

[119] Paul Hunt, 'Interpreting the International Right to Health in a Human Rights-Based Approach to Health' (2016) 18 Health and Human Rights Journal 109–130.

[120] Brooke Ronald Johnson Jr and others, 'A Global Database of Abortion Laws, Policies, Health Standards and Guidelines' (2017) 95 World Health Bulletin 542.

10.5 THE RIGHT TO HEALTH AS A NORMATIVE CATALYST FOR WHO GOVERNANCE

The 2017 election of Tedros Adhanom Ghebreyesus as WHO Director-General elevated WHO's political commitment to human rights in global health governance. With Director-General Tedros advocating during his election campaign that "universal health coverage is our best path to live up to WHO's constitutional commitment to the right to health",[121] WHO has invoked human rights as a foundation for its flagship universal health coverage (UHC) initiative.

10.5.1 A New Director-General Ensures Human Rights Leadership

WHO Director-General Tedros has provided renewed political leadership in advancing human rights in global health. A staunch advocate of human rights as a foundation of WHO's global health efforts, Director-General Tedros has advocated for the right to health as a normative framework, moral foundation, and political catalyst for global health governance.[122] In his campaign to be elected Director-General, he consistently championed the right to health as the necessary foundation for WHO action. The election campaign focused heavily on WHO's continuing ability to respond to disease outbreaks, reflecting its constrained response to Ebola epidemics in West Africa, and Tedros put human rights at the centre of that debate, advancing the right to health under law – not only as essential for the health and wellbeing of every individual but also as a path for preventing and managing disease.[123] With his election by an overwhelming majority of WHO Member States, there was broad endorsement of the right to health as a central focus of WHO governance.[124] Where human rights were once neglected, the right to health would become increasingly prominent in WHO's human rights-based approach.

This renewed commitment to human rights was encapsulated in WHO's Thirteenth Global Programme of Work (GPW13) for 2019–2023, framing the right to health as one of its core priorities:

> An example of the values underpinning WHO's human rights-based approach to ensuring healthy lives is the right to the highest attainable standard of health as enshrined in the WHO Constitution. This right is connected to a wide range of civil, political, economic, social, and cultural rights including the right to an adequate standard of living, adequate and healthy food, clothing, housing, and safe drinking water and sanitation, and to the continuous improvement of living conditions.

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[121] Benjamin Mason Meier, 'Human Rights in the World Health Organization: Views of the Director-General Candidates' (2017) 19 (1) Health and Human Rights Journal 293.

[122] Benjamin Mason Meier and Lawrence O. Gostin, 'WHO Advances the Right to Health for Universal Health Coverage' (*OUPblog*, 2018) <https://blog.oup.com/2018/05/who-advances-right-universal-health-coverage/> accessed 31 December 2024.

[123] Lawrence O. Gostin, 'The World Health Organization's Ninth Director-General: The Leadership of Tedros Adhanom' (2017) 95 (3) Milbank Quarterly 457–461.

[124] World Health Organization, 'Health is a Fundamental Human Right' (10 December 2017) <https://www.who.int/news-room/commentaries/detail/health-is-a-fundamental-human-right> accessed 31 December 2024.

> WHO has used human rights principles to argue for public health measures to address issues ranging from climate change and tobacco control to mental health.[125]

GPW13 served as a normative framework for WHO's leadership in global health governance, with this GPW recognising that "[c]onsistent with its Constitution, WHO will be at the forefront of advocating for the right to health in order to achieve the highest attainable standard of health for all".[126] Commemorating the twin 70th anniversaries of WHO and the UDHR, WHO recognised that "it is more important than ever for the health and human rights communities to stand together as partners to uphold the values of the UDHR and resist contemporary threats to human rights".[127]

To strengthen institutional capacity to implement the right to health, WHO formalised a new relationship with OHCHR.[128] Under this Memorandum of Understanding between WHO and OHCHR, WHO Director-General Tedros and then UN High Commissioner for Human Rights Zeid Ra'ad al Hussein signed a Framework of Cooperation between the agencies, agreeing to strengthen their collaboration through capacity building efforts to implement human rights-based approaches at country level, research efforts to advance international norms and standards for the realisation of the right to health, and accountability efforts to strengthen the way in which health issues are monitored by UN human rights mechanisms.[129] Complemented by expanded WHO collaborations with civil society, these new partnerships examined human rights "to health and through health", providing a normative foundation for WHO's continuing efforts to frame UHC as the overarching focus of all WHO activities.

10.5.2 The Right to Health as a Framework for Universal Health Coverage

Director-General Tedros put forward UHC as the principal basis to realise the right to health, reflecting WHO's commitment to expanding health coverage for all, starting with those furthest behind. Building from WHO's longstanding commitment to primary health care, UHC reflects the notion that no one should be pushed into poverty as a result of health care expenditures, and that such health care should be of adequate quality, including the availability of a trained and equipped health workforce and relevant health commodities.[130] WHO's commitment to UHC has grown from a concept of financial governance for health into a global health movement.[131] Early conceptualisations of UHC by the World Health Assembly were not explicitly rights-based, but as states throughout the world sought to establish the reforms

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[125] WHO, *Thirteenth General Programme of Work 2019–2023* (World Health Organization 2019) res WHA71.1, 10 OR (GPW, at 10) <https://apps.who.int/iris/bitstream/handle/10665/324775/WHO-PRP-18.1-eng.pdf> accessed 31 December 2024.

[126] ibid 33.

[127] Lawrence O. Gostin and others, '70 Years of Human Rights in Global Health: Drawing on a Contentious Past to Secure a Hopeful Future' (2018) 392 The Lancet 2731.

[128] Gillian MacNaughton and Mariah McGill, 'The Challenge of Interdisciplinarity in Operationalizing the Right to Health' (2019) 21 Health & Human Rights Journal 251.

[129] WHO, 'Agreement Signed between WHO and UN Human Rights Agency to Advance Work on Health and Human Rights' [press release] 21 November 2017.

[130] UN General Assembly, 'Global Health and Foreign Policy' (2012) UN doc A/RES/67/81.

[131] WHO, *Universal Health Coverage Partnership* (World Health Organization 2017).

necessary to move towards UHC, it became clear that such reforms could not achieve their intended purpose without aligning laws, policies, and practices with the right to health.[132] Looking to UHC as a human rights imperative, this movement drew attention to the decisive role of the law in ensuring equitable health financing, robust governance, transparency, accountability, and efficient and quality health service delivery.[133]

With UHC embraced as a health target under the SDGs, UHC became a key institutional priority for WHO, which held out UHC as a political basis to advance a more equity-orientated and rights-based approach to health. Director-General Tedros argued that "the best long-term investment in protecting and promoting human rights is to invest in stronger health systems, especially primary health care", harkening back to the effort to ensure primary health care under the Declaration of Alma-Ata and concluding that

> [t]he growing momentum toward UHC – combined with the global commitment to sustainable development – offers unique opportunities to advance global health and human rights. WHO can and must play a catalytic role to enable all governments to achieve UHC and, in turn, realise human rights.[134]

Describing UHC as an entitlement rather than a privilege, this holistic focus on health reflected a commitment to expanding quality health coverage for all. Human rights thus provided a basis for advancing a more equity-orientated approach to health, centred on reaching the most marginalised under the SDGs. To rally the world to advance UHC as a human rights imperative, WHO led efforts to develop a political declaration on UHC in the UN General Assembly, with this 2019 UN High-Level Meeting reaffirming the right to health and seeking to make UHC a reality through law reforms that uphold a rights-based approach to health through participation and accountability.[135] Providing a clear mandate for human rights in WHO policies, programmes, and practices, WHO established an institutional path to structure rights-based engagement to ensure the highest attainable standard of health, looking to other international organisations as partners in human rights mainstreaming through global health governance. These rights-based partnerships would strengthen WHO leadership in the rapidly unfolding COVID-19 response, even as WHO faced new human rights challenges in bringing the world together to face this rapidly escalating global threat.

10.6 HUMAN RIGHTS CHALLENGES IN THE COVID-19 RESPONSE

Rights-based governance was tested by the unprecedented challenge of responding to the COVID-19 pandemic. National health systems and social protection policies faltered under

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[132] H Nygren-Krug, 'The Right(s) Road to Universal Health Coverage' (2019) 21 (2) Health and Human Rights Journal 215.

[133] WHO, 'Health Systems Governance for Universal Health Coverage: Action Plan' (World Health Organization 2014).

[134] Tedros Adhanom Ghebreyesus, 'Human Rights are Foundational to Global Health' in Lawrence O. Gostin and Benjamin Mason Meier (eds), *Foundations of Global Health & Human Rights* (Oxford Academic 2020) xi.

[135] UN General Assembly, Political Declaration of the High-Level Meeting on Universal Health Coverage (18 October 2019) A/RES/74/2.

the strain of COVID-19, with State neglect of WHO guidance leading to cascading rights violations throughout the world.[136] In spite of the rapid scientific development of a COVID-19 vaccine, neglect of the right to health persisted in inequitable vaccine distribution systems, overlooking repeated WHO pleas for vaccine equity and undercutting the promise of global solidarity through human rights. Amidst continuing human rights challenges in this cataclysmic health threat, with COVID-19 deepening inequalities and exposing injustices, WHO looked to human rights as central to global health law reforms to strengthen global health governance. However, Member States steadily abandoned human rights obligations in their intergovernmental negotiations, leaving WHO weakened in upholding rights in future challenges.

10.6.1 Early Responses Restrict Human Rights and Undermine WHO Governance

As COVID-19 began to spread throughout the world, WHO initially looked to human rights obligations as a foundation for the pandemic response across WHO Member States. WHO immediately sought to emphasise the risks to health-related human rights in public health responses to COVID-19, publicly proclaiming a crucial place for human rights in structuring responses to the pandemic.[137] Echoing calls from the UN Secretary-General and High Commissioner for Human Rights, Director-General Tedros declared in early March 2020 that "all countries must strike a fine balance between protecting health, minimising economic and social disruption, and respecting human rights".[138] WHO encouraged Member States to integrate human rights protections into their public health responses, recognising human rights not only as a "moral imperative" but as "essential to addressing public health concerns". In April 2020, WHO published a guidance note to frame state responses to COVID-19, 'Addressing Human Rights as Key to the COVID-19 Response', drawing from WHO's constitutional recognition of the right to health and calling for human rights to "continue to serve as a beacon for how countries respond to this and other public health emergencies".[139] This WHO guidance highlighted non-discrimination and equality, realisation of health-related human rights in carrying out physical distancing measures, consideration of socioeconomic and gender-related implications, and obligations of international assistance and cooperation in a global pandemic response.[140]

Looking to international legal obligations under global health law, WHO sought to facilitate state implementation of the IHR (2005), which, as noted above, require that national health measures "shall be implemented with the full respect for the dignity, human rights and

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[136] UN Committee on Economic, Social, and Cultural Rights, 'Statement on the Coronavirus Disease (COVID-19) Pandemic and Economic, Social, and Cultural Rights' (2020) UN doc E/C.12/2020/1.

[137] WHO, 'Addressing Human Rights as Key to the COVID-19 Response' (21 April 2020) <https://www.who.int/publications/i/item/addressing-human-rights-as-key-to-the-covid-19-response> accessed 31 December 2024.

[138] WHO, 'Director General, Media Briefing' (11 March 2020) <https://www.who.int/news-room/detail/01-05-2020-statement-on-the-third-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-coronavirus-disease-(covid-19)> accessed 31 December 2024.

[139] WHO (n 137).

[140] ibid.

fundamental freedoms of persons".[141] However, following Director-General Tedros's declaration of a Public Health Emergency of International Concern (PHEIC) under the IHR, states failed to adhere to WHO's human rights guidance in the early response, testing the IHR in responding to the COVID-19 pandemic. Although the IHR mandates that national measures shall not be more intrusive to individuals than reasonably available alternatives,[142] many governments took broad actions that restricted human rights, in many cases without any effort to explain the legitimacy, necessity, or proportionality of such measures under global health law or to justify human rights derogations to protect public health under international human rights law.[143] Many States reflexively pursued sweeping public health actions that led to widespread limitations of rights: travel bans that infringed the freedom of movement,[144] xenophobic policies that violated principles of non-discrimination,[145] and surveillance technologies that weakened individual privacy.[146] These restrictions were undertaken in direct contravention of WHO recommendations and international human rights obligations, threatening the health and human rights of the most marginalised.[147]

Recognising human rights as a moral imperative and legal obligation in the COVID-19 response, Director-General Tedros continued to argue that "to suggest that we must choose between health and human rights is completely wrong",[148] with WHO continuing to provide technical guidance to protect human rights through proportionate public health measures in accordance with international law.[149] Director-General Tedros argued forcefully that "health is a right of all – at all times – not a privilege to be enjoyed only in times of prosperity".[150] As the pandemic continued to threaten the world, advocates continued to press for the importance of interconnected human rights in a whole-of-government response to COVID-19.[151] However, governments responded to this novel public health threat in ways that infringed human rights, including denials of care to vulnerable populations; societal lockdowns that neglected health, economic, and social needs; and travel bans that divided the world in facing

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[141] WHO (n 92), Art 3 (1).

[142] ibid Art 43.

[143] Sharifah Sekalala, Lisa Forman, Roojin Habibi and others, 'Health and Human Rights Are Inextricably Linked in the COVID-19 Response' (2020) 5(9) BMJ Global Health.

[144] R Habibi, GL Burci, TC de Campos and others, 'Do Not Violate the International Health Regulations during the COVID-19 Outbreak' (2020) The Lancet 395/10225, 664–666.

[145] O Nay, 'Can a Virus Undermine Human Rights?' (2020) Lancet Public Health e238–e239.

[146] Sharifah Sekalala, Stéphanie Dagron, Lisa Forman and others, 'Analyzing the Human Rights Impact of Increased Digital Public Health Surveillance during the COVID-19 Crisis' (2020) 22 Health & Human Rights Journal 7–20.

[147] D Pūras, J Bueno de Mesquita, L Cabal and others, 'The Right to Health Must Guide Responses to COVID-19' (2020) 395 Lancet 1888–1890.

[148] Tedros Adhanom Ghebreyesus, HRLC Annual Lecture, University of Nottingham, 11 December 2020.

[149] SAGE values framework.

[150] Ghebreyesus (n 148).

[151] Roojin Habibi and others, 'Harmonizing Global Health Law and Human Rights Law to Develop Rights-based Approaches to Global Health emergencies' (International Commission of Jurists, 24 February 2021) <https://www.icj.org/harmonizing-global-health-law-and-human-rights-law-to-develop-rights-based-approaches-to-global-health-emergencies/> accessed 31 December 2024.

a common threat.[152] Facing this state resistance, the WHO Secretariat did not follow through on its early human rights rhetoric, shifting its advocacy from the legal obligations of human rights to moral claims for equity and solidarity,[153] even as nations neglected these non-binding commitments – in their domestic and global responses.

10.6.2 Vaccine Inequity and the Failure to Realise Global Solidarity

The COVID-19 pandemic reaffirmed the need for the world to come together to realise human rights in access to vaccination, but instead of coming together in solidarity to confront the COVID-19 pandemic through global governance, States pursued nationalist vaccine procurements that undermined extraterritorial human rights obligations under the right to health.[154] Such extraterritorial obligations have long evolved under international human rights law to require States to take action separately and through international cooperation – to realise human rights universally.[155] Where extraterritorial obligations under global health law similarly require that States provide assistance to, and cooperation with, WHO, the IHR affirmed this extraterritorial human rights obligation through its explicit commitment to international collaboration and assistance in supporting national public health capacities.[156] Yet, without strong foundations of extraterritorial human rights obligations in global health governance, WHO faced constraints in realising the right to health to ensure vaccine equity.[157]

As the UN sought to bring the world together through human rights in responding to the global threat of COVID-19, WHO faced ongoing obstacles in realising vaccine equity through global solidarity. WHO initially recognised that a human rights-based response to the pandemic is built not only on domestic obligations, but on obligations of "international assistance and cooperation", describing these human rights obligations as essential to both national and "global efforts".[158] Critically, WHO argued that international assistance and cooperation are "akin to … domestic obligations, not subsidiary or secondary in any way", requiring that States give equal priority to rights throughout the world rather than prioritising national needs

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[152] Judith Bueno de Mesquita, Anuj Kapilashrami and Benjamin Mason Meier, 'Strengthening Human Rights in Global Health Law: Lessons from the COVID-19 Response' (2021) 49 Journal of Law, Medicine & Ethics 328–331.

[153] Jose E. Alvarez, 'The WHO's Mixed Human Rights Messages' 2023 4 (1) Yearbook of International Disaster Law Online 306–333.

[154] J Bueno de Mesquita and BM Meier, 'Moving towards Global Solidarity for Global Health through Multilateral Governance in the COVID-19 response' in *COVID-19, Law and Human Rights: Essex Dialogues* (University of Essex 2020), 31–40.

[155] Benjamin Mason Meier, Judith Bueno de Mesquita and Caitlin R. Williams, 'Global Obligations to Ensure the Right to Health: Strengthening Global Health Governance to Realise Human Rights in Global Health' (2022) 3 Yearbook of International Disaster Law 3–34.

[156] WHO (n 92) Art 44; Margherita M. Cinà and others, 'The Stellenbosch Consensus on the International Legal Obligation to Collaborate and Assist in Addressing Pandemics: Clarifying Article 44 of the International Health Regulations' (2020) 19(1) International Organizations Law Review 157–187.

[157] Lawrence O. Gostin, Safura Abdool Karim and Benjamin Mason Meier, 'Facilitating Access to a COVID-19 Vaccine through Global Health Law' (2020) 48 Journal of Law, Medicine & Ethics 622–626.

[158] WHO, Addressing Human Rights as Key to the COVID-19 Response (2020).

to the exclusion of global needs.[159] Yet despite this early focus on extraterritorial human rights obligations, WHO entreaties for assistance and cooperation to realise vaccine equity came to be framed in terms of a moral duty of solidarity rather than recognised as an international obligation of human rights, threatening the health and human rights of the most marginalised populations.[160]

While WHO pursued early leadership in facilitating a human rights-based approach to the COVID-19 response, human rights were not consistently integrated across subsequent pronouncements, technical guidance, and policy initiatives. In seeking to end rising vaccine apartheid, WHO sought global solidarity, yet it retreated from its earlier framing of obligations of international assistance and cooperation under international human rights law. WHO continued to lead efforts to facilitate vaccine equity (such as the COVID-19 Vaccines Global Access (COVAX) mechanism, the Covid-19 Technology Access Pool, and the ACT-Accelerator, efforts discussed in the chapter by Hampton, Upton and Eccleston-Turner); however, these efforts did not look to a human rights-based approach anchored in international legal obligations – instead relying on non-binding ethical principles (such as equity and solidarity) and charitable approaches (for vaccine donations) to navigate inequitable access across nations.[161] Human rights advocacy for vaccine equity came to look beyond WHO. As the World Trade Organization (WTO) contemplated a waiver of intellectual property regulations to facilitate vaccine equity, human rights advocates rallied for this 'TRIPS Waiver', but WHO refrained from engaging consistently in these debates in support of the right to health, as the WTO repeatedly prioritised intellectual property over public health.[162] In seeking to strengthen WHO governance in future pandemic responses, new opportunities arose in the pandemic response to revitalise human rights obligations through global health law reforms.

10.6.3 WHO Member States Abandon Human Rights in Global Health Law Reforms

Even as States neglected human rights in their emergency responses to the COVID-19 pandemic and failed to ensure global solidarity through vaccine equity, they began to pursue simultaneous law reforms across the global health landscape to transform global health governance.[163] With WHO Member States launching twin processes – to amend the IHR and

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[159] ibid.

[160] Luciano Bottini Filho, 'The Legal Determinants of Scarcity: Expanding Human Rights Advocacy for Affordability of Health Technologies' (2023) 25 (2) Health & Human Rights 205–217.

[161] Office of the United Nations High Commissioner for Human Rights, 'Analytical study on key challenges in ensuring access to medicines, vaccines and other health products in the context of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' (2 July 2024) A/HRC/56/28.

[162] International Commission of Jurists, 'Expert Legal Opinion: Human Rights Obligations of States to Not Impede the Proposed COVID-19 TRIPS Waiver' (International Commission of Jurists, 2021) <https://www.icj.org/wp-content/uploads/2021/11/Human-Rights-Obligations-States-Proposed-COVID-19-TRIPS-Waiver.pdf> accessed 31 December 2024.

[163] Benjamin Mason Meier, Roojin Habibi and Lawrence O. Gostin, 'A Global Health Law Trilogy: Transformational Reforms to Strengthen Pandemic Prevention, Preparedness, and Response (2022) 50 Journal of Law, Medicine & Ethics 625–627.

to develop a new Pandemic Agreement – WHO looked to these global health law reforms to redress the challenges of the COVID-19 pandemic and strengthen global governance in responding to future pandemic threats.[164] These pivotal multilateral reforms provided unique opportunities to codify human rights obligations under global health law. However, the resulting IHR amendments in June 2024 prioritised equity and solidarity principles to the exclusion of human rights,[165] with advocates' hopes for health-related human rights dashed in negotiations leading to the May 2025 Pandemic Agreement, as populist governance has threatened the future of both human rights and WHO governance.

In planning for these necessary reforms to meet future pandemic threats, WHO in 2020 established the Independent Panel on Pandemic Preparedness and Response (IPPPR), an independent review panel with a mandate to examine why COVID-19 became a global health and socioeconomic crisis. The IPPPR specifically commissioned a background paper on the human rights impacts of the pandemic response, and this human rights background paper, echoing criticisms from the UN human rights system, critiqued States for, among other things, their inability or unwillingness to cooperate in adopting human rights-based approaches to preventing and curtailing public health emergencies.[166] Yet despite recommended reforms to strengthen WHO's human rights authorities and mainstream rights in WHO governance, the human rights recommendations from this background paper were almost entirely absent from the final IPPPR report and recommendations,[167] with the ensuing World Health Assembly resolution[168] focusing its normative justifications for law reforms on 'equity' alone, which was thought to be more politically acceptable to Member States.[169]

Subsequent WHO Member State negotiations sought to reform global health law through amendments to the IHR and the development of a new Pandemic Agreement.[170] The human rights limitations of the COVID-19 response provided the World Health Assembly with an opportunity to strengthen WHO leadership under the right to health.[171] However, while the

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[164] Steven Solomon, 'Challenges and Prospects for the Intergovernmental Negotiations to Develop a New Instrument on Pandemic Prevention, Preparedness and Response' (2023) Journal of Law, Medicine and Ethics 51.

[165] Alexandra L. Phelan and others, 'Global health reform must continue amid new infectious disease threats' (2024) 386 British Medical Journal 1601.

[166] Judith Bueno de Mesquita, Anuj Kapilashrami and Benjamin Mason Meier, 'Human Rights Dimensions of the COVID-19 Pandemic' (2021) 49 The Journal of Law, Medicine and Ethics 328.

[167] Independent Panel on Pandemic Preparedness and Response, 'COVID-19: Make it the Last Pandemic' (May 2021) <https://theindependentpanel.org/mainreport/#download-main-report> accessed 31 December 2024.

[168] World Health Assembly, 'Strengthening WHO Preparedness for and Response to Health Emergencies' (May 2021) <https://apps.who.int/gb/ebwha/pdf_files/WHA74/A74_ACONF2-en.pdf> accessed 31 December 2024.

[169] R Khosla and S Gruskin, 'Equity without Human Rights: A False COVID-19 Narrative?' (2021) BMJ Global Health e006720.

[170] Roojin Habibi, Tim Fish Hodgson, Benjamin Mason Meier and others, 'Reshaping Global Health Law in the Wake of COVID-19 to Uphold Human Rights' (2021) Health and Human Rights Journal <https://www.hhrjournal.org/2021/06/01/reshaping-global-health-law-in-the-wake-of-covid-19-to-uphold-human-rights/> accessed 31 December 2024.

[171] Lisa Forman, Sharifah Sekalala, and Benjamin Mason Meier, 'The World Health Organization, International Health Regulations & Human Rights Law' (2022) 19 International Organizations

May 2024 IHR amendments included some developments that aligned with human rights norms and principles – including through an enhanced focus on preparedness, equity, solidarity, and accountability – these amendments were not explicitly aligned with international human rights law, neglecting to provide needed clarity on the scope of permissible human rights restrictions as well as specific measures affecting human rights such as travel restrictions and social measures.[172] The World Health Assembly also offered the promise of strengthening human rights obligations under a proposed "pandemic treaty";[173] yet, while the initial zero draft of this international instrument included significant human rights language, this language was steadily eroded across rounds of state negotiations,[174] with the final Pandemic Agreement offering only preambular support for the right to health and human rights in public health emergencies.[175] WHO Member States have missed a crucial opportunity to strengthen human rights – in global health law reforms to frame pandemic preparedness, prevention, and response and in the development of WHO's Fourteenth Global Programme of Work (GPW14) 2025–2028 – with this neglect leaving WHO vulnerable to further attacks on human rights in global health amid rising international divisions in global governance.

10.7 CONCLUSION – WHO AT A CROSSROADS

Human rights are not an abstract set of inspirational ideas but rather a legal framework for global governance. The long evolution of human rights in WHO – in the development, implementation, and operationalisation of human rights for public health – has created a foundation for human rights advancements in WHO governance. The process of institutionalising human rights – translating rights from the language of revolution to a framework for governance – has required WHO to embark on major shifts to both its mission and the activities necessary to carry out that mission. Where the advancement of human rights in global health has long been threatened by political constraints in international relations, organisational resistance to legal discourses, and staff ambivalence towards human rights, WHO has taken institutional steps to bring human rights to the centre of its policies, programmes, and practices.

WHO leadership can renew the promise of rights-based global governance in the face of longstanding political challenges to global health and human rights, yet WHO faces continuing threats amidst rising populist forces. As countries around the world retrench inward – prioritising national interests over global solidarity – these populist leaders have expressly

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Law Review 37–62.

[172] Lisa Forman and others, 'How Did Human Rights Fare in Amendments to the International Health Regulations? (2024) 52 Journal of Law, Medicine and Ethics 905–19.

[173] Lawrence O. Gostin, Benjamin Mason Meier and Barbara Stocking, 'Developing an Innovative Pandemic Treaty to Advance Global Health Security' (2021) 49 Journal of Law, Medicine and Ethics 503–508.

[174] Benjamin Mason Meier and others, 'Human Rights Challenges in the Pandemic Treaty Negotiations' (2022) Geneva Health Files <https://genevahealthfiles.substack.com/p/human-rights-challenges-in-the-pandemic> accessed 31 December 2024.

[175] Neiloy Sircar and others, 'Building Rights-Based Implementation After the Pandemic Agreement' (2025) Health and Human Rights. <https://www.hhrjournal.org/2025/06/25/building-rights-based-implementation-after-the-pandemic-agreement/> accessed 10 July 2025.

targeted public health science, universal human rights, and global health governance, transforming populist anxiety about disease threats into nationalist attacks on WHO. The withdrawal of the United States from WHO has presented an existential threat to future efforts to realise human rights in global health governance. Responding to these forces of populist nationalism raises an imperative to strengthen WHO's human rights authorities through the difficult years to come, as these efforts will be crucial to mainstreaming human rights across WHO policies, programmes, and practices; solidifying Member State support for the right to health; and codifying human rights norms and principles in global health law.