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Lawrence O. Gostin
Georgetown University, gostin@law.georgetown.edu

Benjamin Mason Meier
University of North Carolina at Chapel Hill, bmeier@unc.edu

Hanna Huffstetler
University of North Carolina at Chapel Hill, hannahuff.01@gmail.com

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Human Rights in Global Health Governance

Benjamin Mason Meier, Hanna Huffstetler and Lawrence O. Gostin

INTRODUCTION

Human rights frame global health governance. In codifying a normative foundation for global governance in the aftermath of World War II, states came together under the auspices of an emergent United Nations (UN) to develop human rights under international law.[1] Human rights law, establishing international norms to advance global justice, has thereby become a universally accepted framework for global health,[2] and the past seventy years have witnessed an evolution of international human rights law to define the highest attainable standard of health.[3] Conceptualizing health disparities as rights violations, these health-related human rights offer universal standards to frame government responsibilities for the progressive realization of health and facilitate legal accountability for health policy.[4] Where globalizing forces have created an imperative for global governance institutions to meet an expanding set of global health challenges, human rights have come to guide institutions of global health governance.[5]

As rights-based approaches have become fundamental to global health governance, the proliferation of global governance institutions has warranted a wider sharing of human rights responsibilities for health beyond the UN human rights system.[6] Institutions of global governance are not only seen as instrumental to the development of international human rights law but also as essential to assuring the implementation of rights-based obligations in a rapidly globalizing world.[7] Over the past twenty-five years, the UN has sought to formalize these human rights implementation responsibilities across the entire global governance system. Translating international law into organizational action, global governance institutions seek to "mainstream" human rights across their policies, programs, and practices.[8] To understand the ways in which human rights are realized in global health, this Special Issue of *Global Health Governance* examines the role of global health governance institutions in structuring the implementation of human rights for public health.

THEMATIC CONTENT OF THE SPECIAL ISSUE

The diverse scholarship highlighted in this Special Issue identifies the rights-based actions of global health institutions and analyzes facilitating and inhibiting factors for human rights mainstreaming in global health governance. Rather than looking only to the language of human rights in institutional documents, these articles seek to assess how institutional policies, programs, and practices support or limit human rights advancement for public health promotion. Where institutions of global health governance face challenges in mainstreaming human rights through institutional actions, multi-sectoral approaches, coordination, and collaborations across institutions and stakeholders are discussed as ways to facilitate the implementation of health-related human rights. To explore these aspects of human rights mainstreaming, the articles in this Special Issue address critical questions across key themes that define global governance for health.

Operationalizing Human Rights in Global Health through the World Health Organization

First among these themes is the role of the World Health Organization (WHO) in operationalizing human rights for global health. Although WHO once had unrivaled

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leadership over global health, the contributions to this Special Issue highlight the lack of a contemporary institutional leader to coordinate rights-based global initiatives to prevent disease and promote health. In this shifting global health landscape, contributing authors analyze WHO's contemporary efforts to reassert health-related human rights for vulnerable populations through its multilateral policy platform and international normative guidance.

In a commentary on WHO's role in advancing the right to healthcare in conflict, Leonard Rubenstein discusses WHO's failure to address attacks on healthcare workers and facilities. Rubenstein suggests that while WHO's "broad view of the scope of healthcare protection is consistent with the right to health," the organization does not frame its work in accordance with human rights criteria. Although the WHO Executive Board voted to pass a resolution on WHO's role in humanitarian emergencies, internal confusion and capacity limitations have restricted WHO's ability to realize its obligation to "develop methods for systematic data collection and dissemination" in complex humanitarian emergencies. Cooperation among WHO member states, who are often the perpetrators of violence against healthcare workers and facilities, remains an unresolved challenge in realizing rights to protect health systems through WHO governance.

Framed by these challenges to cooperation among member states, Po-Han Lee's commentary examines WHO's engagement to realize the right to health for lesbian, gay, bisexual, and transgender (LGBT) individuals. Where the WHO Executive Board is seen as "the gatekeeper of the global health agenda," Lee argues that the debate about LGBT health at WHO is "deadlocked" by a "lack of globalism." Despite evidence of health risks faced by LGBT individuals, many governments still maintain discriminatory practices against sexual and gender minorities in domestic policy and, in accordance with domestic practices, seek to block LGBT health on the global health agenda. As the Executive Board continues to be constrained by conflicts among national ideologies, these conflicts inhibit WHO's cosmopolitan vision of "health for all." To achieve more open dialogue, the author contends that a people-centered approach to global health governance, "accommodating the 'polyvocality' of civil societies," is imperative to the realization of health justice.

The achievement of a people-centered approach to health, however, requires meaningful WHO guidance to inform both national and international health policy. Mark Eccleston-Turner investigates the utility of the WHO Pandemic Influenza Preparedness (PIP) framework—developed through negotiations with industry, civil society, and other stakeholders—in facilitating the realization of the right to health in the context of an influenza pandemic. Although there exist core legal obligations to provide essential drugs and immunization against major infectious diseases under the right to health, Eccleston-Turner argues that such obligations presuppose "that the state is capable of adequately addressing the problem with the resources it has available to it." Where the state lacks the means to secure access to medicines on behalf of its population, the WHO PIP framework seeks to create a global "virtual Stockpile" of pandemic influenza vaccines for distribution to countries in need. Yet, while the PIP framework enables "equalized vaccination timing" between developing and developed states, Eccleston-Turner argues that it insufficiently addresses the needs of developing states to achieve minimum vaccination coverage to establish community immunity. This shortcoming suggests that the framework "is not able to ensure that developing states are able to make use of the Stockpile in order to discharge their right to health obligations." Moving forward, Eccleston-Turner suggests that the WHO put greater emphasis on transfer of technology in its Standard Material Transfer Agreements, empowering developing states to manufacture sufficient levels of vaccines domestically to discharge their right to health obligations.

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Promoting Human Rights Across Multi-Sectoral Institutions that Govern Underlying Determinants of Health

Where WHO has faced shortcomings in implementing human rights for health, there is tremendous value in collaboration across multi-sectoral governance institutions to facilitate global solidarity and bolster efforts to mainstream human rights in addressing underlying determinants of health. As a second theme of this Special Issue, contributing authors review how institutions throughout the UN system have sought to mainstream human rights in a multi-sectoral approach to global health partnerships. These articles examine the achievements of, and challenges faced by, institutional collaborations for human rights advancement to meet global health goals.

The implementation of human rights law in global health governance can be seen as a measure of success for human rights governance; yet, as the articles in this Special Issue demonstrate, global health governance at times suffers from a paucity of institutional mechanisms to facilitate accountability for the realization of health-related human rights. Reflecting a lack of coordination between institutions, varied institutional approaches have arisen to monitor the realization of health-related human rights. This lack of standardized assessments is analyzed by Sara Davis, Doris Schopper, and Julia Epps, who compare sexual violence intervention monitoring and evaluation indicators across global health institutions. By examining a set of organizations particularly active in the area of sexual violence in humanitarian contexts—the WHO, International Red Cross, and UNFPA among them—the authors find that "there is as of yet not one core package of interventions for sexual violence survivors agreed among all institutions: some emphasize mainstreaming, while others emphasize specific types of programming." Despite this fragmentation of indicators to assess medical care, mental health and psychosocial support, and legal aid in the context of sexual violence in conflict settings, the authors find that there are a "number of commonalities" between programmatic interventions, such as an emphasis on access to emergency care and the need for women's participation in stakeholder consultation and governance mechanisms.

Given that overlapping institutions operate under independent normative frameworks and political motivations, inter-organizational partnerships can provide a means to harmonize shared norms through human rights. The Office of the UN High Commissioner for Human Rights (OHCHR) has sought to facilitate greater normative consensus in these partnerships through its participation "in inter-agency bodies and activities to advocate for a human rights-based approach in all UN activities." Through the identification of key factors that have influenced the evolution of the right to health at the OHCHR, Gillian MacNaughton critically examines the ways in which the OHCHR has promoted human rights mainstreaming through its institutional leadership. However, low financial commitment, insufficient staff, and difficulty transitioning from to "conceptualization implementation" are highlighted as central challenges to human rights mainstreaming for health through OHCHR support. Despite these challenges, salient OHCHR leadership and engagement has supported institutions of global health governance across the UN system, building human rights capacity among institutions in translating their commitment to human rights into rights-based policies and programs. Acknowledging the significance of health-related human rights to the realization of other rights, MacNaughton concludes that a greater interdisciplinary approach to the practice of human rights "could substantially advance the mainstreaming of the right to health – at the OHCHR and globally."

As such multi-sectoral collaborations can influence the substance and process of human rights mainstreaming, Samantha Plummer, Jackie Smith, and Melanie Hughes examine the inter-organizational networks formed by intergovernmental organizations (IGOs) for health and transnational social movement organizations (TSMOs) for women's

and other human rights. By looking at longitudinal trends in the links between TSMOs and prominent health IGOs, the authors find that while the number of organizational partnerships between the two has grown over the past thirty years, recent trends suggest that "for human rights groups addressing the right to health, not all health-related IGOs are equally attractive partners." Noting a lack of TSMOs reporting ties to the WHO, the world's leading global health organization, the authors contend that this lack of partnerships is "largely a consequence of the WHO's lack of formal infrastructure for non-state engagement and of its failure to challenge neoliberal approaches to health policy." Through additional network analysis, the authors find that other agencies addressing issues underlying health, particularly the United Nations Children's Fund (UNICEF) and the Food and Agriculture Organization of the United Nations (FAO), have become "more central" in global health governance networks.

Economic Governance for Global Health through Human Rights

These rights-based inter-organizational partnerships have become particularly relevant in an expanding global health landscape limited by scarce resources and increased competition among a growing number of stakeholders. In the final theme of this Special Issue, contributing authors explore how the structure of economic governance, through financial support for global health or economic impediments to health governance, can influence the realization of health-related human rights. Through rights-based approaches to public health financing and international trade law, these bilateral and multilateral partnerships for specific health priorities can either advance economic governance to achieve health goals or advance economic ends in ways that damage public health.

Focusing on the role of the Global Fund to Fight AIDS, Tuberculosis, and Malaria (GFATM), Sharifa Sekalala and Toni Haastrup examine the practices and mechanisms utilized by the GFATM to promote human rights among recipient countries. While the GFATM has sought to integrate human rights considerations into its institutional funding practices, thereby developing new rights-based rules of appropriate behavior at the domestic level, it has "created challenges in the transposition of human rights norms within domestic contexts." The authors note that a challenging institutional context, contestation by domestic partners, lack of human rights indicators, and limited resources hinder the Fund's ability to achieve a full realization of human rights on the ground level. Where the work of the GFATM is crucial to ensuring that human rights are realized through health policy and practice in recipient countries, Sekalala and Haastrup argue that GFATM must push for an increased intersectional approach, not only in its conceptualization of human rights, but also among its programs and methods of financing.

The effective translation of human rights under international law into human rights realization in public health practice is a metric of success for human rights mainstreaming, and the failure to meet this standard limits the credibility of an institution in global health governance. Through an institutional analysis of the World Bank, Yusra Shawar and Jennifer Prah Ruger identify factors that have either facilitated or challenged the advancement of rights-based approaches in the World Bank's global health funding. Continuing barriers to human rights mainstreaming include not only resistance from some member states, as discussed in other articles of this Special Issue, but also the Bank's strictly economic, non-political mandate and approach to funding. Sustained advocacy from NGOs and the work of the Nordic Trust Fund—which was created as "an internal 'knowledge and learning initiative' to assist in showing Bank staff how human rights relate to their work and goals"—are identified by the authors as factors that support the Bank's future engagement in rights-based approaches to health initiatives. Reflecting on the challenges to human rights that lie ahead for the World Bank, the authors contend that "an ethical demand for health equity—rather than a legal demand for a 'right to health'—will better enable the Bank

to deliver improved health development outcomes."

Framed by this institutional analysis of the World Bank, Hiwote Fantahun's commentary uses Ethiopia as a case study to examine the Bank's responsibility to ensure respect for human rights in highly repressive countries that receive international health assistance. Although such international assistance has played a vital role in improving global health outcomes, it has also been used as a government financial tool to further discrimination and oppression. As a number of NGO reports have uncovered, the Ethiopian government has utilized Bank-backed programs, including the Promoting Basic Services and the Productive Safety Net Program, "to control the population, punish dissent, and undermine political opponents." The author suggests that monitoring and evaluation mechanisms at the Bank focus mainly on administrative and financial assessments, neglecting human rights accountability in Bank funding. To remedy this gap in accountability, Fantahun argues that the Bank should thoroughly incorporate human rights into its social safeguard mechanisms, enabling the Bank to assess national laws and policies in a manner that is consistent with universal human rights obligations.

Summarizing this debate over why the Bank is reluctant to engage with human rights, Desmond McNeill's commentary draws from authoritative critiques, reiterating the challenges of instrumentalism and the Bank's economic mandate. In distinguishing the human rights responsibilities of the Bank from those of its member states, McNeill argues that the Bank, by virtue of its financial resources and expertise, takes on a "special moral responsibility" for human rights. To meet this responsibility, McNeill builds from a recent viewpoint in *The Lancet,* proposing that the Bank "set in motion a deliberative process" to "establish 'principles for ensuring fair resource allocation for health'." These principles, McNeill argues, should be derived from core human rights principles established in the Bank's own report on *Integrating Human Rights into Development*.

Where institutions like the World Bank face challenges in mainstreaming human rights in international health financing, partnerships with other stakeholders can provide a shift in the policy forum to facilitate greater alignment with human rights norms and develop new ways of thinking about rights-based approaches to governance. Meri Koivusalo and Katrina Perehudoff explore the influence of this forum shifting, examining how new trade agreements have impeded global governance and health-related rights and finding that the mere adoption of human rights provisions is insufficient to support global governance in health. Acknowledging contemporary challenges to rights-based approaches in governance—particularly the legitimization in trade agreements of corporate actors, which are not bound by international human rights obligations—the authors further explore whether and how human rights law and principles can contribute to global governance for health. Koivusalo and Perehudoff argue that despite the current lack of consideration of human rights as part of global trade law, human rights may still be promoted through the improved utilization of human rights obligations in treaty texts; the strengthening of health and human rights considerations in trade and investment agreement negotiations; and the strengthening of current global public health law through the establishment of a new global governance reference such as the proposed Framework Convention on Global Health.

FROM GLOBAL HEALTH GOVERNANCE TO GLOBAL GOVERNANCE FOR HEALTH

Contemporary global governance has expanded beyond multilateral negotiations among nation-states.[9] The inability of international health law to respond through states to globalized determinants of health has necessitated the construction of new normative frameworks through global health governance.[10] In response to this challenge, a number of international, national, and non-governmental actors have turned to international human rights law to frame mechanisms for collective action and accountability systems for policy implementation.[11] Where these international, national, and non-governmental actors in

global health governance increasingly invoke a rights-based approach to health, this Special Issue examines the role played by global governance partnerships in operationalizing human rights for global health.

Human rights norms and principles increasingly provide legitimacy to institutions of global health governance, as this Special Issue demonstrates, yet there remains no consistent, universal definition of the rights-based approach to health. As a consequence, global health governance institutions have demonstrated varied approaches to human rights implementation through organizational actions. Decentralized institutions of global health governance have mainstreamed human rights in their institutional policies, programs, and practices; however, the fragmentation of these uncoordinated human rights initiatives raises a comparative research imperative to assess the institutional structures that are conducive to human rights implementation. This imperative for comparative analysis is taken up in the forthcoming Oxford University Press volume on *Human Rights in Global Health: Rights-Based Governance in a Globalizing World*, the first volume to systematically examine the role of global institutions in operationalizing human rights for global health.[12]

Such comparative institutional analyses are necessary to assure that human rights mainstreaming in global health governance can realize human rights in global health. Where this Special Issue does not present a comprehensive overview of the myriad of stakeholders that have a role in an expanding global health landscape—focusing on key global health themes, including WHO, partnerships among international organizations, and global economic governance—this initial survey highlights how each institution is engaging human rights in unique ways and through different structures. While there exist concerns that the proliferation of stakeholders in global health can undercut efforts to mainstream human rights, the contributions to this Special Issue emphasize the ways in which an expanding number of global institutions—despite challenges—are actively seeking to address interconnected health-related human rights in ways that reflect interrelated determinants of health. These institutions are only just beginning to develop organizational structures to mainstream human rights into their policies, programs, and practices. Through an improved understanding of the heterogeneous ways in which stakeholders operationalize human rights in global health, the identification of good practices for human rights implementation through global health governance can provide a basis to advance health as a means to a more just world.

Benjamin Mason Meier *is an Associate Professor of Global Health Policy at the University of North Carolina at Chapel Hill, a Scholar at Georgetown Law School's O'Neill Institute for National and Global Health Law, and a consultant to international organizations, national governments, and nongovernmental organizations. Dr. Meier's interdisciplinary research—at the intersection of global health, international law, and public policy—examines the development, evolution, and application of human rights in global health.*

Hanna Huffstetler *is a recent graduate of the University of North Carolina at Chapel Hill. She currently works as an Associate in Research at the Duke University-Margolis Center for Health Policy, with experience and interest in researching health-related human rights in global health governance.*

Lawrence O. Gostin *is University Professor (Georgetown University's highest academic rank), Founding O'Neill Chair in Global Health Law, and Director of the O'Neill Institute for National and Global Health Law. Professor Gostin is the Director of the World Health*

Organization Collaborating Center on Public Health Law & Human Rights, and serves on expert WHO advisory committees. He is a Member of the Institute of Medicine/National Academy of Sciences, Council of Foreign Relations, and Hastings Center.

Human Rights in Global Health: Rights-Based Governance for a Globalizing World (2018) is now available from Oxford University Press.

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