

Advancing Legal Preparedness through the Global Health Security Agenda

Global Health Law

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Abstract: The Global Health Security Agenda (GHSA) is a multilateral, multisectoral partnership comprised of more than 70 countries, international organizations, foundations, and businesses to strengthen global health security.

The Global Health Security Agenda (GHSA) is one of the most important global platforms in galvanizing stakeholders around the world

to strengthen countries' capacities to prevent, prepare for, detect, and respond to global health emergencies today.¹ With the backdrop of the 2009 H1N1 pandemic, the 2012 MERS-CoV outbreak, and the 2014 Ebola outbreak in West Africa, the launch of GHSA in February 2014 tightened the relationship between global health law (specifically, the International Health Regulations [IHR] [2005]) and country-level capacity building and implementation for greater health security.² Yet until 2021, none of GHSA's "Action Packages" (the groups driving GHSA's technical work) had explicitly focused on the role of law in strengthening global health security. This column introduces GHSA's newest Action

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About This Column

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Package, focused specifically on advancing public health emergency legal preparedness as a critical capacity for health security, explaining the essential role that the Action Package can play in promoting and developing technical tools on legal preparedness to prevent, prepare for, and respond to public health emergencies, including pandemic influenza.

Learning from the experiences of past outbreaks and COVID-19, there is a need to reach a common understanding in the definition and importance of public health emergency legal

the priorities of the Action Package that include defining legal preparedness, identifying a methodology that will serve as a mapping strategy, the creation of a legal framework, and the legal mapping analyses across issue areas. This column concludes by reinforcing the role of law in public health emergency.

The GHSA Legal Preparedness Action Package

GHSA is a multilateral, multisectoral partnership comprised of more than 70 countries, international organiza-

Joint External Evaluation (JEE), a voluntary monitoring and evaluation tool that involves a collaborative, multisectoral process to assess country capacities across a wide range of technical areas to prevent, detect, and respond to a wide range of public health emergencies; track their progress; and incentivize their long-term strengthening.⁸ While the JEE includes a legal technical area, there is a clear need to better define the capacity and understand how countries can become better prepared legally, especially considering the legal challenges observed during the COVID-19 pandemic.⁹

Given the need for clearer understanding and guidance on legal preparedness, GHSA's ability to bring together a diverse set of experts and garner political support at a global level gave way to the creation of the Legal Preparedness Action Package. In June 2021, Argentina, Georgetown Law's O'Neill Institute for National and Global Health Law, and the United States formally presented a proposal before GHSA leadership to create the Action Package. The proposal was approved in August 2021 and already has the support of numerous countries, international organizations, and civil society organizations that recognized the importance of coming together to promote and advance legal preparedness as a critical capacity for health security. The working group of the Legal Preparedness Action Package consists of global health legal experts, international organizations, and government officials from around the world who are working collaboratively to define legal preparedness, identify and advocate the use of existing tools relevant to legal preparedness, and develop needed guidance and capacity building tools to support countries in achieving greater legal preparedness.¹⁰

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Informed by cross-cutting lessons learned from the COVID-19 pandemic and other emergencies, the Legal Preparedness Action Package will help advance GHSA's mission and goals to leverage the COVID-19 experience to better support countries around the world to improve capacity building for preparedness. The Action Package will set a foundation for public health emergency legal preparedness by developing technical tools and approaches to guide and support countries in building their legal preparedness capacity.

preparedness and to build a foundation from which to develop and disseminate legal resources that can support countries' legal preparedness in future emergencies.³ The COVID-19 pandemic and other past public health emergencies have highlighted a range of legal challenges that arise during a response, including, but not limited to, the need for emergency laws to trigger the operationalization of public health measures (e.g., quarantine, isolation, masking policies, border control measures); crisis standards of care; access to personal protective equipment (PPE); and research, development, manufacturing, procurement, and distribution of medical countermeasures.⁴ This column will first provide an overview of the Legal Preparedness Action Package, including background and strategic objectives. It will then discuss

tions, foundations, and businesses to strengthen global health security. It integrates into its partnership international organizations like the World Health Organization, Food and Agricultural Organization, and World Organization for Animal Health. This approach necessitates multiple sectors, such as foreign affairs and defense; as well as non-governmental partners including private sector and civil society.⁵ Therefore, GHSA is well-positioned to serve as a foundation for promoting legal preparedness globally as it seeks to build capacity at the country level to support and achieve greater global health security.⁶ As a multilateral and multisectoral initiative that works at policy and technical levels, GHSA can trigger action to address gaps in global health security.⁷ Together with WHO, GHSA promotes the

capacity building for preparedness. The Action Package will set a foundation for public health emergency legal preparedness by developing technical tools and approaches to guide and support countries in building their legal preparedness capacity. The strategic objectives will focus on:

- *Outreach and Advocacy* – focusing on identifying and using political and technical fora as well as engaging relevant stakeholders across multiple sectors and geographic regions to raise wide-ranging awareness and support for public health emergency legal preparedness as a critical public health capacity.
- *Guidance Tools* – establishing a foundation and greater understanding by defining legal preparedness, its relation to other health security capacities, and the importance of sub-national, national, regional, and global legal preparedness to achieve global health security outcomes.¹¹ This will include building technical tools and leveraging existing resources to guide countries in improving their overall legal preparedness.
- *Capacity Building* – developing and promoting training approaches to build country capacity, creating a network of experts, incorporating standardized legal benchmarks, and facilitating progress toward legal preparedness for countries that can support implementation of priority activities identified in their National Action Plan for Health Security.

Defining “Public Health Emergency Legal Preparedness”

The first major challenge for the Action Package is developing a definition of “public health emergency legal preparedness” that both reflects current evidence and practice and serves as a unifying point of research and analysis given the diversity of

stakeholders. There are few efforts to define the term, even though the role of law in health security has circulated conceptually in global health academic and policy communities for a decade or more. Some scholars and policy analysts point to gaps in legal capacity, but it is rare that they specifically recognize it as such, much less provide a definition. Where definitions of “legal preparedness” are proposed, the focus is primarily general public health and not public health emergencies — this is seen even in literature explicitly focused on public health emergencies. Additionally, available definitions of “public health emergency legal preparedness” are formulated based on limited, often anecdotal contexts and do not take into account complex global dimensions of public health emergency legal preparedness. As such, there is a clear need to define “public health emergency legal preparedness” in a universal way that can be understood and used by all.

In the context of public health emergencies, legal preparedness requires the recognition that law plays a critical role in supporting public health capacities that are essential to all phases of an emergency — from prevention to recovery. Legal preparedness involves the identification of legal approaches that could impact a public health response, and the strategic development of legal instruments to facilitate the implementation of public health capacities needed for a response, with supporting policy instruments that interpret and provide greater guidance on the implementation of such legal instruments.¹² Legal preparedness encourages the development and review of systems and infrastructure to allow for rapid corrective action.

Based upon the definition of “public health emergency preparedness”¹³ and after a thorough literature review, conversations with Action Package members and external experts, the Legal Preparedness Action Package has adopted, on a preliminary basis, the following formulation:

Public health emergency legal preparedness is the capability to understand, map, individuate and anticipate, develop, refine, and utilize legal instruments and related committed authorities that enable the implementation of public health capacities, including strategies to prevent, protect against, respond to, and recover from public health.¹⁴ Public health emergency legal preparedness aims to facilitate efficient and effective coordination among relevant multi-sectoral stakeholders and support the overall continuous process of preparing for and responding to public health emergencies.¹⁵

Leveraging and Complementing Existing Resources

In addition to defining “legal preparedness,” the Action Package is working to develop a methodology that will serve as a mapping strategy for identifying existing resources for legal preparedness and creating a living library of those resources that will continue to grow over time. Building from methodologies developed by members of the Action Package in past research efforts, the O’Neill Institute for National and Global Health Law and the Global Health Law Consortium are working to analyze the resources, in consultation with their respective GHSA Legal Preparedness Action Package leads. This analysis will identify the relevant aspects of existing resources and classify them under the priority areas identified by the Legal Preparedness Working Group (LPWG) to guide the Action Package’s workstreams. Through this work, the Action Package will provide an important service to the global community by centralizing and promoting these resources into a single, accessible location; avoid needless duplication of existing efforts; and provide a starting point for analysis of the priority legal areas to be addressed by the Action Package.

Legal Framework

After defining legal preparedness and identifying existing resources that will inform a centralized research and analysis starting point, the resulting research and information will necessarily need to comport with the legally appropriate framework. To better support the prevention, preparedness, detection, and response to public health emergencies, a legal framework is needed. A legal framework is made up of binding legal instruments that formally establish and integrate a country's legal preparedness and response activities, setting a legal foundation for the infrastructure needed to respond to a public health emergency. A country's legal framework may include, but is not limited to, constitutions, legislation, arrêtés, decrees, regulations, administrative requirements, and applicable international agreements. This framework, in turn, may vary internally, for example by principles of federalism or local competence, and externally, by bilateral and multilateral arrangements, agreements, and organizations.

The Action Package members are keenly aware, and are broadly representative, of national and regional contextual differences relevant to this legal analysis. Therefore, the work developed will require careful scoping to develop useful guidance and capacity building tools.

Legal Mapping

One of the first priorities of the Legal Preparedness Action Package will be legal mapping analyses across issue areas. Legal mapping helps to understand a country's legal infrastructure and approach to developing legal instruments. Such mapping provides an overview of legal instruments across and within jurisdictions to understand how public health risks are addressed. It also involves the review and documentation of what legal authorities exist and what those authorities do and do not provide.

As such, legal mapping can help in the assessment of those instruments for clarity and functionality; the development of legal authorities

where necessary; and the incorporation and promotion of international legal standards (e.g., IHR [2005]) at the country level to ensure an efficient and effective coordinated, multisectoral response.¹⁶

Conclusion

The GHSA Legal Preparedness Action Package represents a truly global and diverse acknowledgement of the need to be prepared legally to prevent, detect, and respond to public health emergencies. Over the next two years, the Action Package aims to provide guidance on a range of issues to help countries address a wide gap that requires urgent attention. The GHSA Legal Preparedness Action Package emerged from the legal struggles experienced in dealing with the COVID-19 pandemic and the widely shared understanding that much more must be done to recognize the role of law in public health emergencies, that legal preparedness must be strengthened before the next global health security threat, and that the GHSA is a well-positioned body to do so.

Note

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