

**THE ROLE OF LEGAL AND INSTITUTIONAL FRAMEWORKS
OF GLOBAL HEALTH AGENCIES: THE CASE OF THE
WORLD HEALTH ORGANIZATION**

PRESENTATION TO

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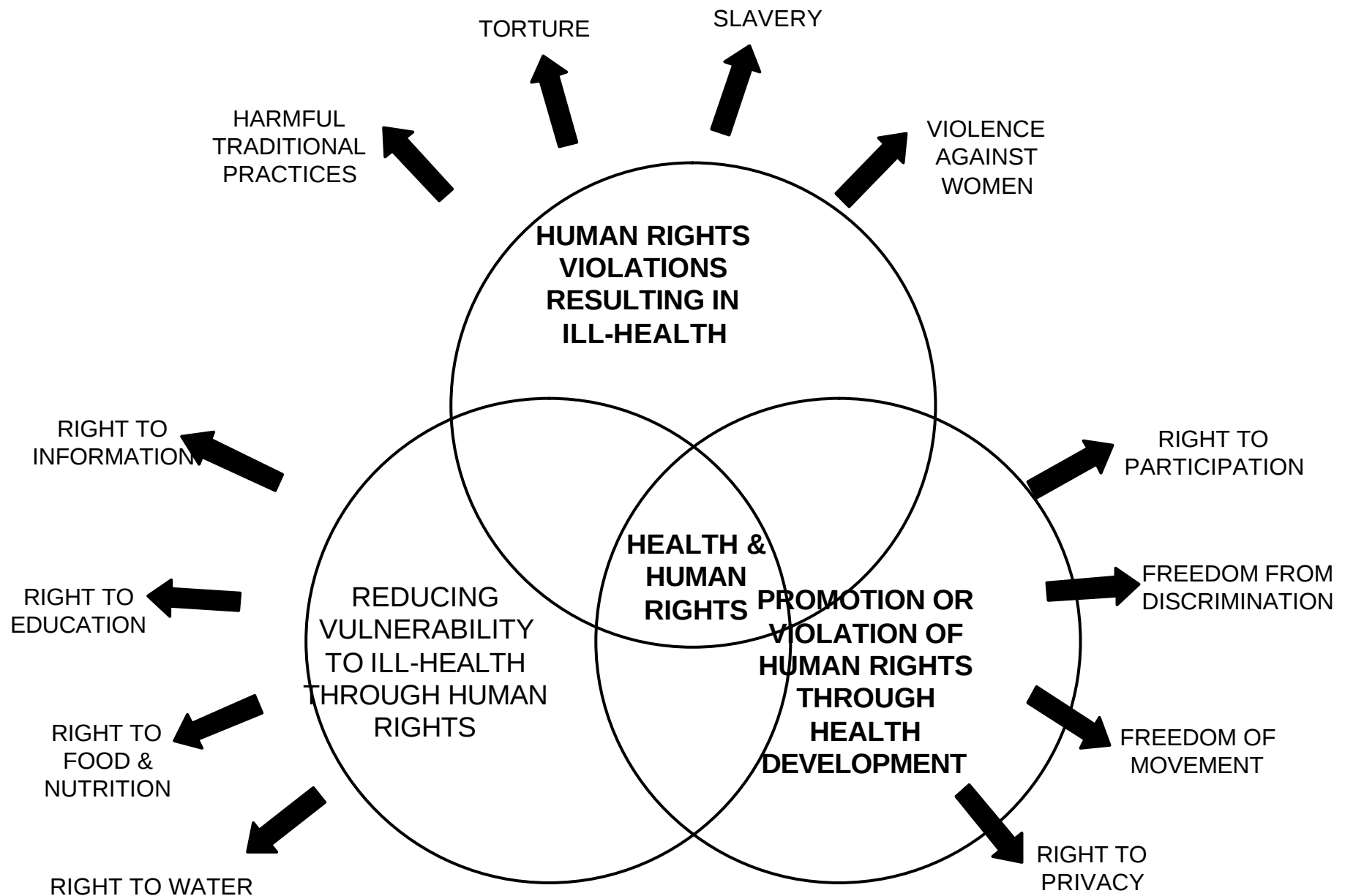
INTRODUCTION

- Global health agencies: an expansive definition
- Human rights based approach to global health
- The World Health Organization: legal basis for health and human rights
- WHO and the advancement of health & human rights
- Legal, institutional and practical limitations to WHO's health and human rights work
- Options for strengthening WHO's work in advancing health and human rights

GLOBAL HEALTH ACTORS

- Several areas of international law as well As agencies are involved in the governance of global health.
- Global health law includes areas of international law applicable in the promotion and protection of global health: International human rights law is one of those major aspects of global health.
- Global health agencies in this paper refers to the World Health Organization as well as others entities involved in global health governance.

Examples of the linkages between health and human rights



What are the right to health

" . . . the right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health..."

"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."

Health is defined as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."

(the WHO Constitution)

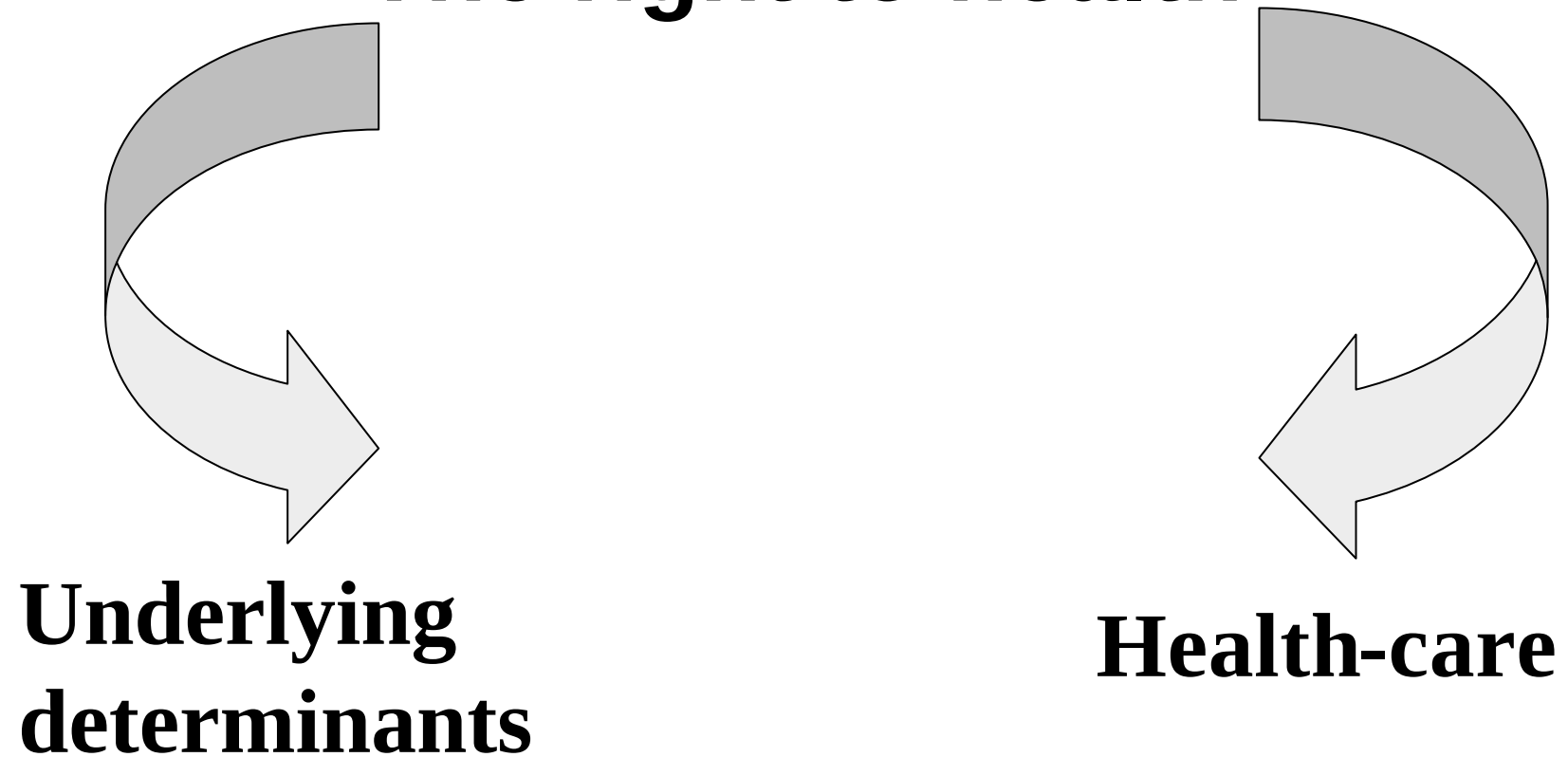
Principle of progressive realization:

Obligation to take steps, individually and through international assistance and cooperation, especially economic and technical, to the **maximum of its available resources** with a view to achieving progressively the full realization of the rights...

Core content of the right to health

- Freedom from discrimination in ensuring access;
- Essential food, basic shelter, housing and sanitation, & safe and potable water;
- Essential drugs as defined under the WHO Action Programme on Essential Drugs;
- Equitable distribution of all health facilities, goods and services;
- A national public health strategy and plan of action

“The right to health”



The right to health:

- Availability
- Accessibility (affordability; non-discrimination; physical accessibility; information accessibility)
- Acceptability

ALSO

- Quality
- Respect
- Protect

LEGAL BASIS

Health and human rights in Global health institutions

- Opportunity
- Need
- Obligation

LEGAL BASIS CONTINUED

- Treaties- binding on Member States parties
- Constitutive Instruments
- Declarations- non-binding or customary international law
- Policy documents- non-binding, e.g. consensual UN global conference action plans Cairo (1994), Beijing (1995).

KEY INSTRUMENTS

- **WHO Constitution (1946), UN System institutional Agreements**
- **The Charter of the United Nations (1945)**
 - **International Covenant on Economic, Social and Cultural Rights (1966)**
 - **International Covenant on Civil and Political Rights (1966)**
- **WHA resolution (1970)**
- **Declaration of Alma Ata (1978) and the World Health Declaration (1998)**
- **General Comments/recommendations on the right to health:CESCR(14),CEDAW(24), CRC(3 and 4).**
- **Special Rapporteur on the right to health (2002)**

UN Common Understanding of a rights-based approach (RBA) to development cooperation adopted by the UNDG/ECHA 2003

- **Outcome:** The realization of human rights is the objective of all development cooperation
- **Process:** Human rights principles guide all stages of design, implementation, monitoring & evaluation of development policies & programmes
- **Capacity-building:** Development cooperation is about building the capacity of rights-holders to claim their rights & duty-bearers to fulfil their obligations...

World Summit Outcome, GA res. 60/1 2005

- We..."call upon all parts of the United Nations to promote human rights and fundamental freedoms in accordance with their mandates";
- We resolve..."to support the further mainstreaming of human rights throughout the United Nations system...."

LEGAL/POLICY BASIS

- **All WHO Member States are now party to at least one human rights treaty that endorses health as a human right**
- **109 WHO Member States have constitutional recognition of a form of health rights.**
- **In 2006, WHA adopted its 11th General Programme of Work (GPW) for 2006-2015. One of the seven priority areas identified under the Global Health Agenda for entire international community outlined in the 11th GPW is "promoting ... health-related human rights".**

health and human rights: core functions

1. To advance health as a human right and other health-related rights

Advocacy
Input to the UN human rights system
Indicators

2. To develop and apply a rights-based approach to health in WHO

Policy development
Research/knowledge base
Training

3. To support Member States in applying a rights-based approach to health

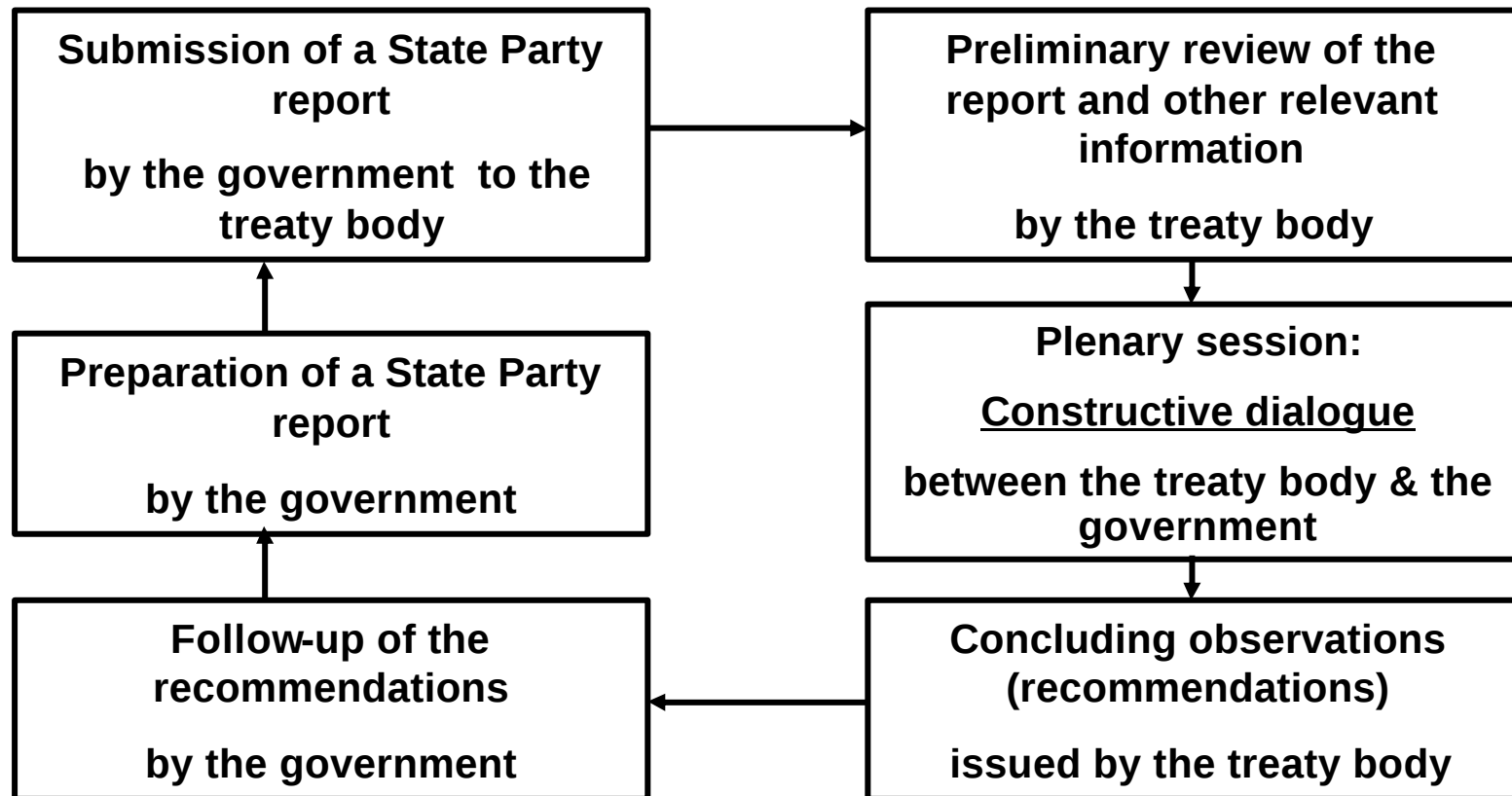
Tools
Training
Country projects

How the right to health has been important for Ministries of Health/health sectors.

- **Human rights are *the first priority* of governments**
- **Enshrined in international and national law**
- **Monitoring mechanisms to enhance accountability**
- **Obligation of Governments *as a whole*, includes ministries of trade, finance and planning**
- **Obligation to *protect* human rights, i.e. must regulate non-state actors.**

A constructive process to help governments be accountable for realizing human rights in their countries

Monitoring process (one cycle: 4-5 years)



Framework for analysis:

Freedom from discrimination “in access to health care and the underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of *race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status, (including HIV/AIDS), sexual orientation, civil, political, social or other status*, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health”.

(General comment on the right to the highest attainable standard of health, article 12 ICESCR)

Legal, institutional and practical limitations

- Immaturity of right to health: Limitations of jurisprudence, perception and resolve: Missed opportunities at WHO
- Interdisciplinary: For example, law and public health
- Lack of capacity/tools/Evidence-base: For example, no acceptable health rights underlying indicators yet.

POLICY AND PRACTICAL CHALLENGES

- Health and human rights instruments as soft law and non-binding nature of WHO constitutional legal provision i.e. the preamble
- Proliferation of politico-legal and other interests: Nodal governance?, realpolitik in international relations theory?, evolution of international norms/law?: Viewed in the context of opposition to health rights from certain nations such as the USA
- Limitations relating to responsibility /accountability of international organizations under international law.

Domestic challenges

- Lack of coordination between the health and the ministries of justice and foreign affairs.
- Limited technical synergy and integration between public health and legal sectors
- Inadequate concretization of human rights requirements at the domestic level..

STRENGTHENING THE ROLE OF WHO

- Supervision of global health and human rights processes and activities through institutional adaptation by facilitating reporting, fact finding and research as well as in country visits. Precedent exists in the International Health Regulations as well as ILO and UNESCO human rights monitoring mechanisms.
- Standard setting and strategies to promote and elaborate the right to health in international law. For example, article 19 of the WHO Constitution. Limited progress in the WHO Framework Convention on Tobacco Control.
- Promoting dialogue with States: Good offices of the Director general of WHO and work on health diplomacy with WHO Member States

STRENGTHENING THE ROLE OF WHO

- Articulate WHO's role: Developing conceptual frameworks (right to public health?), WHO internal and country level human rights capacity building and human rights advocacy
- Build on WHO's comparative advantage: through WHO's global public health management experiences including building on its strengths in health.
- Forge national multi-sectoral as well as international partnerships involving governmental agencies as well as civil society

CONCLUSION

- Global health agencies can play an important role in the advancement of health and human rights, catalysing on their technical competences in health. However, the constraints of the legal, institutional and general governance mechanisms available to these institutions as well limitations of international law have a potential of undermining these efforts. Therefore, global health agencies such as WHO must proactively strengthen and adapt these mechanisms to advance health and human rights in international and domestic law.