

# GLOBAL HEALTH SECURITY AGENDA LEGAL PREPAREDNESS ACTION PACKAGE

## Concept Note

March 2022

### Purpose of GHSA Legal Preparedness Action Package

The Global Health Security Agenda (GHSA) Legal Preparedness Action Package aims to bring countries and key experts together to **build a solid foundation and common understanding** of the competencies necessary for strengthening public health emergency legal preparedness by **developing technical tools** to guide and support countries in strengthening their legal preparedness capacity and **raising greater awareness** globally about the role that legal preparedness plays in preparing for and responding to public health emergencies.

### Why is public health emergency legal preparedness important?

Legal preparedness is a critical component of health security, facilitating the prevention, detection, and rapid response to public health emergencies in line with international standards. Law can both hinder or sustainably strengthen a wide range of public health emergency prevention, preparedness and response activities depending on how legal authorities are employed and coordinated. Legal instruments (e.g., constitutions, legislation, regulations, arrêtés, decrees) can help create sustainable legal infrastructure and yield consistent decision-making at all levels before and during an emergency response. Yet, to date, there is insufficient attention paid at the national, regional, and international levels to the importance of having a strong integrated system of legal preparedness in place ahead of a crisis.<sup>1</sup>

The COVID-19 pandemic has highlighted a range of legal challenges that arise during a response to a public health emergency or while trying to prevent it, including, but not limited to:

- the need for emergency laws to trigger the operationalization of public health measures;
- coordination among public agencies;
- crisis standards of care;
- social distancing measures, including quarantine and isolation;
- border control measures;
- innovation, research, development, manufacturing, and procurement of medical countermeasures;
- equitable access to medical countermeasures, including diagnostics, vaccine, therapeutics, personal protective equipment (PPE), medical devices, and medical supplies;
- need for appropriate regulatory mechanisms for authorizations of medical countermeasures, legal registration, import, and export controls;
- liability risk management related to the use of medical countermeasures;

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<sup>1</sup> In the U.S., for example, between 1985 and 2014, the National Institutes of Health funded just 510 extramural research grants on the health effects of laws or enforcement practices – less than 0.25% of all funded grants.

- balancing individual rights (e.g., privacy; freedom of movement) and public health;
- rapid surveillance and reporting; rapid sharing of biological samples for the development of needed medical countermeasures; and
- planning and administering vaccination campaigns.<sup>1</sup>

While legal limitations were also observed during past public health emergencies, the magnitude of the problem is significantly more apparent due to the scale of the pandemic, with the pandemic overwhelming national responses and leading to unprecedented morbidity and mortality. Moreover, legal challenges arising from implementing measures that limit individual rights, such as freedom of movement and assembly, have created the need to not only improve risk communications approaches during an emergency but also to hold public consultations with affected populations on how these powers should be used as part of preparedness efforts. The legal challenges experienced by countries therefore call for greater awareness about the importance of public health emergency preparedness for an efficient and effective response as well as for the development of legal tools to achieve more comprehensive preparedness in the future.

Ultimately, legal preparedness saves critical time before and during public health emergencies by ensuring that all requisite legal capacities already exist, have been tested, and potential issues have been resolved in advance whenever possible. This means more time and energy can be reserved for the public health, communication, and scientific dimensions of the prevention and response. Additionally, as more countries become better legally prepared, global health security is strengthened. It should be noted that legal preparedness for public health emergencies is closely connected to legal preparedness for other types of disasters and emergencies. Indeed, in many countries, public health emergencies are governed at least in part by general disaster and emergency-related instruments, underlining the importance of taking a holistic approach that acknowledges the connections—and need for integration—between the regulation of public health emergencies and other types of disasters and emergencies.

## **What does public health emergency legal preparedness involve?**

Public health emergency legal preparedness involves the identification of legal approaches that can promote (or hinder) an effective response to a public health event and the strategic development and refinement of legal instruments to facilitate the implementation of public health capacities needed for a response, with supporting policy instruments (e.g., strategies, plans, guidelines) that provide greater guidance on the implementation of such legal instruments, as well as capacity building of local workforces to ensure application of these instruments.<sup>2</sup> Legal preparedness encourages the development, review, and refinement of systems, infrastructure, and frameworks to allow for rapid action (including legal flexibilities to easily change course if needed) and the development of legal mechanisms required in the midst of a response. Where there is an inadequate legal preparedness infrastructure, or does not exist, a rapid response may be more difficult.

It requires advanced planning and implementation through a wide range of methods, including a legal mapping of current legal instruments to achieve greater health security; assessment of those instruments for clarity and functionality; the development, refinement, and implementation of legal authorities and supporting policy instruments where necessary to address remaining gaps; and the incorporation and promotion of international legal standards<sup>3</sup> (e.g., International Health Regulations (IHR) (2005); applicable

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<sup>2</sup> Magnussen, R. et al., [Advancing the Right to Health: The Vital Role of Law](#) (2017).

<sup>3</sup> As set out in existing legal instruments that are legally binding and ratified by the country to be applicable at all levels (the national and sub-national).

international and regional human rights norms, ) at the country level to ensure an efficient and effective coordinated, multisectoral response, especially in circumstances where planning or response involves bilateral or multilateral international relations<sup>4</sup>. Finally, these instruments and the planning surrounding them must be sustainable transparent, effective, inclusive, establish accountability mechanisms, in line with human rights principles, and ensure that implementation efforts are adequately financed.

To start, a better understanding of how countries can work toward improving their legal preparedness is needed to strengthen global health security. While the IHR Joint External Evaluation (JEE) and the States Parties Annual Reporting (SPAR) include “legislation” as one of the capacities for countries to evaluate, monitor, and build, there is a clear need for a more robust definition, indicators, and guidance on what this capacity entails. Even where legal instruments exist to support public health, they may be inadequate to support a rapid response to a health emergency. Additionally, countries need to build the necessary expertise and workforce to be able to bridge the legal preparedness gap, including developing or refining national and sub-national laws to meet GHSA capacities. Unfortunately, public health law expertise continues to be limited across the world, and there is minimal practical guidance and capacity building to guide countries in developing legal preparedness. Moreover, there is currently no platform dedicated to bringing together governments and legal experts from around the world to share experiences and advance public health emergency legal preparedness.

## Why the Global Health Security Agenda (GHSA)?

The Global Health Security Agenda (GHSA) is well-positioned to serve as a key platform to promote and advance public health emergency legal preparedness as a critical capacity globally as it seeks to build capacity at the country level to support and achieve greater global health security. As a multilateral and multisectoral initiative that works at the policy and technical levels to address gaps in global health security, GHSA is able to bring together global health legal experts, international organizations, and government officials from around the world who can work collaboratively to better define legal preparedness, develop a series of innovative tools and methodology, informed by lessons learned from practical experience, preparedness and response policies, institutional knowledge, and academic research), as well as to identify and leverage existing tools to support countries in achieving greater legal preparedness.

The Legal Preparedness Action Package, through its cross-cutting nature and informed by lessons learned from the COVID-19 pandemic, and other emergencies, including the HIV pandemic<sup>5,6,7</sup>, bolsters and advances GHSA’s mission and goals to leverage the COVID-19 experience to better support countries around the world, including through capacity building across a range of technical areas for health security. In its creation, the Legal Preparedness Action Package positions GHSA as a global leader in legal preparedness, meeting a longstanding need in global health security, complementing existing efforts, and

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<sup>4</sup> IFRC, “[Law and Public Health Emergency Preparedness and Response: Lessons from the COVID-19 Pandemic](#)” (2021).

<sup>5</sup> Reports written by UNAIDS and the Australian Federation of AIDS Organizations (AFAO) have highlighted how the HIV/AIDS pandemic helped institute pandemic response measures, both in the context of HIV/AIDS and other emerging pathogens. Additionally, the lessons learned from the early days of HIV/AIDS emergence indicate that pandemic response measures can substantially affect to daily life and have human rights implications that are important to explore in the context of public health emergencies, including COVID-19.

<sup>6</sup> UNAIDS. “Rights in the Time of COVID-19: Lessons from HIV for an Effective, Community-Led Response.” (2020). <https://www.unaids.org/en/resources/documents/2020/human-rights-and-covid-19>

<sup>7</sup> Australian Federation of AIDS Organisations and UNAIDS. Actions On HIV And Health Security Are Mutually Reinforcing: A Call For Better Integration. (2021). <https://www.afao.org.au/wp-content/uploads/2021/09/AFAO-UNAIDS-Occasional-Paper-3-HIV-and-Health-Security-v.4-FINAL.pdf>

-serving a leadership role in ways that no other institution is currently comprehensively undertaking. This is done by leveraging GHSA's multidisciplinary expertise, wide range of stakeholders, global reach across a various countries and regions, and status as key platform for advancing global health security.

## **How will the Legal Preparedness Action Package advance public health emergency legal preparedness?**

The Legal Preparedness Action Package will build off existing efforts with partners to fortify the foundation for legal preparedness by developing and refining technical tools and guidance to support countries in building their legal preparedness capacity. This includes the creation of the Legal Preparedness Working Group (LPWG), a strong network of technical experts who will serve as the technical arm of the Legal Preparedness Action Package and work together to advocate for greater awareness about the role that legal preparedness plays in preparing for health emergencies. By linking experts together into a global network for legal preparedness, the Action Package will build a strong advocacy platform for legal preparedness as well as develop much needed technical resources for countries to review and strengthen legal capacities to respond to future emergencies.

To identify and address priorities for legal preparedness, the Action Package will leverage its members' expertise and experience and harmonize with or complement existing efforts in which they may be engaged in this area. Together, members will develop, enhance, and promote the use of effective tools as well as leverage relevant initiatives and networks, where possible, in order to advance the Action Package's strategic objectives. These tools include, but are not limited to, the development of a standardized definition of public health emergency legal preparedness, guidance for countries to map and assess their legal instruments, training tools to build greater workforce capacity in legal preparedness, and creating a public fora for sharing lessons learned. Longer-term efforts can include creating opportunities to directly support countries seeking to develop, pilot, and scale up legal preparedness efforts and working to achieve systemic changes across multiple sectors and regions to achieve sustainable global legal preparedness. Additionally, the Legal Preparedness Action Package will engage with other Action Packages and Task Forces to collaborate on efforts to jointly address issues of mutual interest and need.

## **Strategic Objectives**

### **Outreach and Advocacy**

1. Identify, engage, and coordinate with relevant stakeholders across multiple sectors and geographic regions, either as new LPWG members or as external partners, to draw upon their respective comparative advantages and strengths for coordinated action to promote, build and achieve greater legal preparedness
2. Bring multisectoral awareness and support at various levels (e.g., political, technical, global, regional, national, sub-national) to recognize legal preparedness as a critical public health capacity by showing the importance of legal preparedness for health emergency prevention, preparedness, and response and to achieve global health security outcomes.
3. Identify resources and facilitate connections between countries and potential funders to support implementation of legal preparedness recommendations.

### **Guidance Tools**

4. Define public health emergency legal preparedness, its relation to other areas of law, and the importance of national, sub-national, and global legal preparedness to achieve global health security outcomes.

5. Build technical tools, including by leveraging existing resources, to guide countries in improving their overall legal preparedness toward supporting country-level, regional, and global health security.

## Capacity Building

6. Identify and leverage existing efforts and tools, where applicable, to develop, refine, and bring to scale approaches to build country capacity (including strengthening sub-national level capacities), incorporate standardized legal benchmarks, and foster progress toward legal preparedness for countries to implement priority activities identified in their National Action Plan for Health Security (NAPHS).
7. Establish a global learning network to build at the country, regional, and global levels, using a variety of platforms (virtual courses, collaborative webinars, in-person trainings, etc.) to expand legal preparedness competencies within Ministries of Health, other relevant government sectors (Ministries of Finance, Ministries of Justice, etc.), and other relevant institutions.

## Organization

### Leadership

Argentina, Georgetown University Law Center's O'Neill Institute for National and Global Health Law, and the United States, serve as Co-Chairs.<sup>8</sup>

### Executive Secretariat

Georgetown University Law Center's O'Neill Institute for National and Global Health Law.

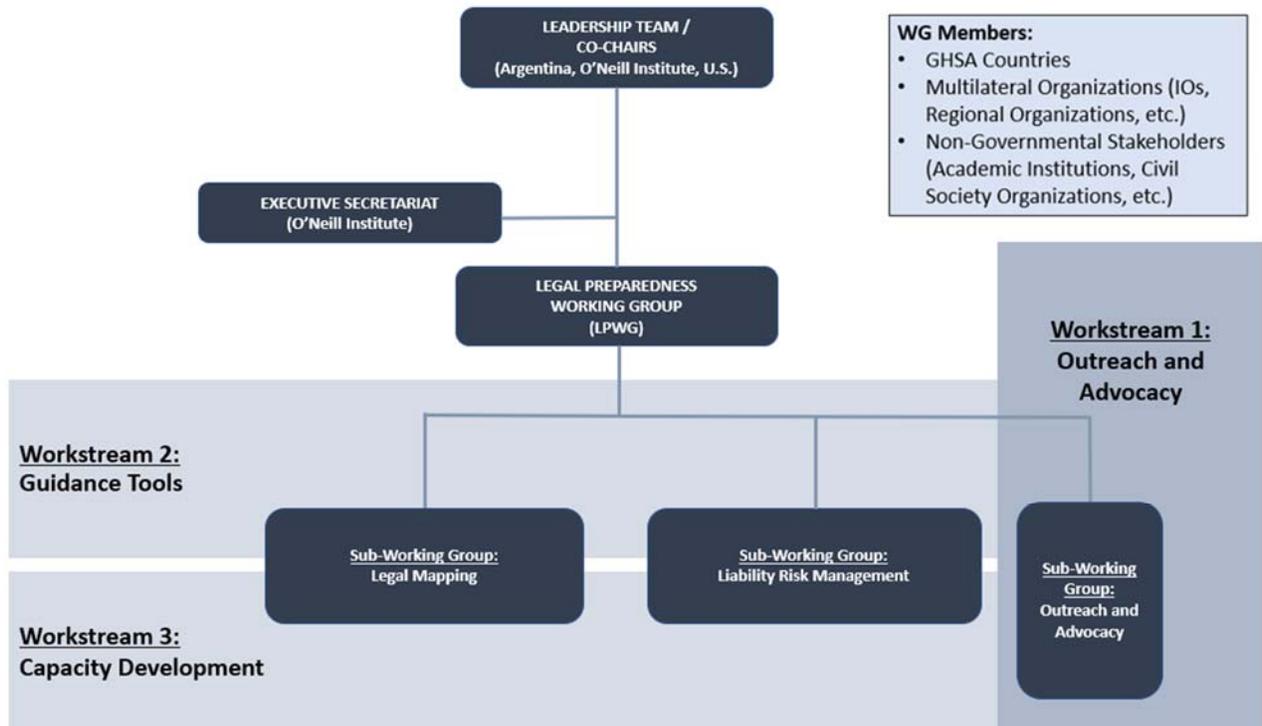
Email: [ghsalpap@georgetown.edu](mailto:ghsalpap@georgetown.edu)

### Working Group

Led by the Co-Chairs, the Legal Preparedness Working Group (LPWG) serves as the technical arm of the Action Package. The group consists of experts from a wide range of stakeholder institutions that captures the broad cross-cutting scope of legal preparedness. These include GHSA member countries, multilateral organizations (international organizations, intergovernmental organizations, regional organizations, etc.), and non-governmental stakeholders (academic institutions, civil society organizations, etc.). The LPWG is sub-divided by sub-working groups, each tasked with developing work under a determined workstream.

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<sup>8</sup> Reflects leadership through GHSA 2024.



## Membership

### Countries

- Argentina
- The Gambia
- Italy
- Kingdom of Saudi Arabia
- Nigeria
- Republic of Korea
- United Kingdom
- United States

### Multilateral Organizations

- Coalition for Epidemic Preparedness Innovations (CEPI)
- Food and Agriculture Organization (FAO)
- Gavi, the Vaccine Alliance
- Inter-American Development Bank (IDB)
- International Development Law Organization (IDLO)
- World Health Organization (WHO)
- World Organisation for Animal Health (OIE)

### Civil Society

- Georgetown University Law Center, O'Neill Institute for National Global Health Law
- Global Health Law Consortium
- Graduate Institute of International and Development Studies, Global Health Centre

- International Federation of Red Cross and Red Crescent Societies (IFRC)
- International Senior Lawyers Project (ISLP)
- Resolve to Save Lives

## Contact

For any inquiries or interest in joining the Legal Preparedness Action Package, contact the Executive Secretariat at [ghsalpap@georgetown.edu](mailto:ghsalpap@georgetown.edu)