

GHSA Legal Preparedness Action Package

Promoting legal preparedness as a critical capacity for an effective response to health emergencies and strengthening global health security

Defining Legal Preparedness in the Context of Public Health Emergencies

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An Approach to Defining Legal Preparedness in the Context of Public Health Emergencies

Legal preparedness helps support and facilitate an effective and timely response to public health emergencies by ensuring that legal capacities exist, have been tested, and potential issues across legal instruments have been resolved in advance wherever possible. With effective legal preparedness, more time, energy, and resources can be reserved for the public health, communication, and scientific dimensions of the emergency prevention and response. Legal preparedness also minimizes the need to develop new legal instruments under emergency conditions that are not conducive to careful deliberation.

In the context of public health emergencies, legal preparedness requires the recognition of the crucial role that legal instruments play in supporting public health capacities that are essential to all phases of an emergency from prevention to recovery.

Legal preparedness involves the following three key objectives:

1. Identification of **legal principles and approaches** that could support and enhance (or hinder) an effective prevention, preparedness of, and response to public health emergencies
2. Strategic **development and refinement of legal instruments** to facilitate public health capacities
3. Enhanced **guidance on the implementation of legal instruments** to help build sustainable prevention, preparedness, and response infrastructure (e.g., institutional mechanisms and coordination frameworks)

Despite the importance of legal preparedness to health security globally, there is still a need to achieve a common understanding of the objectives, including definitions, tools, training, and resources needed to help achieve and meaningfully support countries' efforts to strengthen their legal preparedness.

Definition

In the context of public health emergencies, **legal preparedness is the capability to map, develop, refine, and use legal instruments that enable the implementation of capacities across sectors to prevent, prepare for, respond to, and recover from health emergencies.**^{1,2} This involves identification of legal approaches that can promote an effective response to a public health emergency and the strategic development, refinement, and use of legal instruments (e.g., constitutions, legislation, arrêtés, decrees, regulations) to facilitate the implementation of

¹ Public health emergencies can vary by source or nature. Public health emergency legal preparedness applies to the full range of emergencies, especially unpredictable and large-scale emergencies that pose localized, local, regional, sub-national, national, regional, or global public health risks

² As defined in the International Health Regulations (IHR) (2005), Art. 1: "a likelihood of an event that may affect adversely the health of human populations, with an emphasis on one which may spread internationally or may present a serious and direct danger."

capacities needed for strong health systems. Legal preparedness for public health emergencies aims to facilitate efficient and effective coordination among relevant multisectoral stakeholders and to support the overall continuous process of preparing for and responding to public health emergencies.³

Legal preparedness for public health emergencies requires advanced analysis, planning and implementation through a wide range of methods, including:

- legal mapping of current legal instruments;
- assessment of those instruments for scope, clarity, and functionality;
- surveillance of changes to legal authorities and the development and implementation of legal authorities and supporting policy guidance where necessary;
- incorporation, promotion and implementation of international legal standards (e.g., International Health Regulations (IHR) (2005)) at the country level; and
- accountability mechanisms to ensure alignment with those standards to ensure an efficient and effective coordinated, multisectoral response, especially in circumstances where planning or response involves bilateral or multilateral international relations ⁴

There are **five core elements of legal preparedness for public health emergencies** that must be applied in an integrated manner:

1. **Legal Analysis** is a process consisting of legal mapping, assessment and surveillance, where:
 - **Legal Mapping** helps to survey (and compare) current legal instruments existing within a larger context in order to understand the country's legal frameworks for the prevention of, preparedness for, and response to public health emergencies and ultimately to achieve greater health security. Such mapping provides a look at legal instruments across jurisdictions and/or a review of legal instruments within a jurisdiction to understand how public health risks are addressed. Legal mapping also involves the review and documentation of what legal authorities exist, what those authorities do or provide, and what they do not provide. Legal mapping is an objective activity and does not intend to evaluate the effectiveness of legal instruments, nor analyze its gaps. Legal mapping supports and facilitates the development, refinement, implementation, and strengthening of preparedness for and response to public health risks.
 - **Legal Assessment** is a functional review to evaluate the effectiveness of legal instruments by analyzing gaps with the country's legal system and national context in mind. Assessment findings are designed to inform the refinement and revision of a country's existing instruments. Assessments can include simulation exercises as part of wider emergency preparedness planning.
 - **Legal Surveillance** is tracking changes to legal instruments over time.
2. **(Country-Specific) Legal Framework** is an existing set of legal instruments addressing different aspects of prevention of, preparedness for, and response to public health emergencies that are legally binding, specific to the country, and agreed upon by the national and sub-national government. A legal framework is made up of legal instruments that formally establish and integrate legal prevention, preparedness, and response activities within a country, 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, the following:

³ See Nelson et al., "Conceptualizing and Defining Public Health Emergency Preparedness."; Cohen et al., "Promoting Public Health Legal Preparedness for Emergencies: Review of Current Trends and Their Relevance in Light of the Ebola Crisis." See also Ransom and Olson, "Legal Preparedness for Public Health Emergencies: A Model for Minimum Competencies for Mid-Tier Public Health Professionals (2012)." See also Hodge et al., "Assessing Competencies for Public Health Emergency Legal Preparedness Part II." See also Benjamin and Moulton, "Public Health Legal Preparedness."

⁴ IFRC, "Law and Public Health Emergency Preparedness and Response: Lessons from the COVID-19 Pandemic."

constitutions, legislation, arrêtés, decrees, and regulations. A country's legal framework is regularly reviewed and, when necessary, updated or revised to address identified gaps.

3. **Capacity** of officials in governmental and non-governmental sectors to apply legal instruments to implement different aspects of public health emergency preparedness, response and recovery. This also includes clear roles and responsibilities for these professionals to support the country's legal preparedness, including a clear understanding of roles and responsibilities and the ability to apply the relevant legal instruments to achieve public health goals across the various phases of a public health emergency.
4. **Coordination** to implement strategies for public health prevention, preparedness and response, identified in legal instruments, across multiple sectors and jurisdictions, including throughout all phases of a public health emergency, taking into account the complex coordination required to prepare for, respond to, and recover from public health emergencies that may involve multiple governments, jurisdictions, agencies, and sectors (especially complex emergencies arising at the human-animal-environmental interface).
5. **Implementation tools** to support, train, and help guide the interpretation of relevant legal instruments. These tools are available to and promoted among multi-sectoral stakeholders, including those who implement the capacities needed to prepare for, respond to, and recover from public health emergencies. They include legal framework guides, legal mapping tools, policies, standard operating procedures, trainings, simulation exercises, and awareness campaigns.

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