



Disappearing human rights in WHO pandemic treaty negotiations

Session 2: Operation and Trade-Related Issues of WHO Pandemic Treaty Negotiation

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World Health
Organization

FOURTH MEETING OF THE INTERGOVERNMENTAL
NEGOTIATING BODY TO DRAFT AND NEGOTIATE
A WHO CONVENTION, AGREEMENT OR OTHER
INTERNATIONAL INSTRUMENT ON PANDEMIC
PREVENTION, PREPAREDNESS AND RESPONSE
Provisional agenda item 3

A/INB/4/3
1 February 2023

Zero draft of the WHO CA+ for the consideration of the Intergovernmental Negotiating Body at its fourth meeting

WHO convention, agreement or other international instrument on
pandemic prevention, preparedness and response (“WHO CA+”)



World Health
Organization

SECOND MEETING OF THE WORKING GROUP ON
AMENDMENTS TO THE INTERNATIONAL HEALTH
REGULATIONS (2005)
Provisional agenda item 6

A/WGIHR/2/7
6 February 2023

Article-by-Article compilation of proposed amendments to the International Health Regulations (2005) submitted in accordance with decision WHA75(9) (2022)

The Working Group on Amendments to the International Health Regulations (WGIHR) at its first meeting on 14–15 November 2022 decided that “the Secretariat shall also publish online an article-by-article compilation of the proposed amendments, as authorized by the submitting Member States, in the six official languages, without attribution of the proposals to the Member States proposing them.”¹

In furtherance of the WGIHR’s decision above, this document provides an article-by-article compilation of the proposals for amendments to the International Health Regulations (IHR) (2005) submitted in accordance with decision WHA75(9) (2022).

Proposed amendments are presented as follows:

- ~~Strikethrough~~ = proposal to delete existing text
- **Underlined and bold** = proposal to add text
- (...): existing text in the IHR (2005) in relation to which no proposals for amendments were submitted and which is therefore omitted from the compilation

The compilation is not intended to replace the proposed amendments to the IHR (2005) in the original submission.



World Health
Organization

SEVENTY-SEVENTH WORLD HEALTH ASSEMBLY
Provisional agenda item 13.4

A77/10
27 May 2024

Intergovernmental Negotiating Body to draft and negotiate a WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response

Report by the Director-General

1. The Director-General has the honour to transmit to the Seventy-seventh World Health Assembly the outcome of the Intergovernmental Negotiating Body (INB) to draft and negotiate a WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response (see Annex), in line with decision SSA2(5) (2021).

ACTION BY THE HEALTH ASSEMBLY

2. The Health Assembly is invited to consider the outcome of the INB, as contained in the Annex.

Annex

A77/10

Appendix

Proposal for the WHO Pandemic Agreement

**Draft text reflecting progress up to Thursday 19 September at 17:30
CEST**

Recalling that the INB did not reach consensus on the text of the WHO Pandemic Agreement, and worked on the basis of the principle that “nothing is agreed until everything is agreed”, highlighting and brackets in the text indicate the following:

- **Green** highlighting: text for which initial agreement was reached;
- **Yellow** highlighting: text for which initial convergence was reached;
- Text without highlighting: text for which no convergence was reached;
- Text in [brackets]: Text with respect to which there were divergent views.

Preamble

4. *Recalling* the Constitution of the World Health Organization, which states that 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,

5. [*Recalling* that the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly on 18 December 1979, provides that States Parties to that Convention shall take appropriate measures to eliminate discrimination against women in the field of health care, and that Sustainable Development Goal 5 aims “to achieve gender equality and empower all women and girls”,]

11. *Recognizing* the importance of rapid and unimpeded access of humanitarian relief [in accordance (DEL)] [consistent] with international law, including international human rights law and international humanitarian law, [and the provision of humanitarian assistance in line with resolution A./RES46/182.] [and the respect of the [humanitarian (DEL)] principles of [sovereign equality,] humanity, neutrality, impartiality and independence for the provision of humanitarian assistance [with the consent of the affected country and in principle on the basis of an appeal by the affected country] (DEL)],

Article 3. Principles

Article 3. Principles [and approaches] (DEL)

To achieve the objective of the WHO Pandemic Agreement and to implement its provisions, the Parties shall be guided, inter alia, by the following [principles (DEL)] [and approaches] (DEL):

1. The sovereign right of States, in accordance with the principles of international law, as enshrined in the Charter of the United Nations and the WHO Constitution, to legislate and to implement legislation, within their jurisdiction, [and their sovereign rights over their biological resources (DEL)/(RETAIN)];

2. Full respect for the dignity, human rights and fundamental freedoms of all persons, and the enjoyment of the highest attainable standard of health of every human being [as well as the right to development] [as well as full respect for non-discrimination, gender equality and the protection of persons in vulnerable situations] (DEL);

3. Full respect [for the principles and applicable rules] of international humanitarian law for effective pandemic prevention, preparedness and response;

4. Equity as a goal [, principle] and outcome of pandemic prevention, preparedness and response, striving for the absence of unfair, avoidable or remediable differences among and between individuals, communities and countries;

5. Solidarity with all people and countries in the context of health emergencies, inclusivity, transparency and accountability to achieve the common interest of a more equitable and better prepared world to prevent, respond to and recover from pandemics, recognizing different levels of capacities and capabilities [, as well as the special circumstances of small island developing States]; and

[5bis. Full recognition of the special circumstances of [developing countries, in particular] (DEL)] small island developing States and of least developed countries in relation to pandemic prevention, preparedness and response;]

6. The best available science and evidence as the basis for public health decisions for pandemic prevention, preparedness and response.

- (2023) Article 4. Guiding principles and rights
- [del] The right to health...[defined as a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment. CSA ref. CESCR GC 14]
- [The right for health ETH, HTI] includes the right of [timely UGA] access to pandemic-related products such as vaccines, PPE, diagnostics and therapeutics [,etc. HTI] [technology and know-how UGA].]
- **11. Gender equality; 12. Non-discrimination and respect for diversity** [based on ~~race, religion, political belief, economic or social condition~~ [race, colour, gender, sex, language, religion, political or other opinion, national or social origin, property, birth and other status. CSA]; **13. Rights of individuals and groups at higher risk and in vulnerable situations**

(2023) Article 14. [Prioritization AF], Protection [and promotion AUS, NZL] of human rights

- 1. The Parties shall, in accordance with their ~~national laws~~ [obligations under international human rights law, CAN, ARG] incorporate non-discriminatory measures to protect ~~human rights~~ [the right to health AF] as part of their pandemic prevention, preparedness, response and recovery, with a particular emphasis on the rights of persons in vulnerable situations.

“persons in vulnerable situations” includes indigenous peoples, persons belonging to national or ethnic, religious or linguistic minorities, refugees, migrants, asylum seekers, stateless persons, persons in humanitarian settings and fragile contexts, marginalized communities, older people, persons with disabilities, persons with health conditions, pregnant women, infants, children and adolescents, and those living in fragile areas, such as Small Island Developing States

Article 14. Protection of human rights

- 2. Towards this end, each Party shall:
 - (a) incorporate into its laws and policies human rights protections during public health emergencies, including, but not limited to, requirements that **any limitations on human rights are aligned with international law**, including by ensuring that:
 - (i) any restrictions are nondiscriminatory, necessary to achieve the public health goal and the least restrictive necessary to protect the health of people;
 - (ii) all protections of rights, including ~~but not limited to~~ [THA], [the right to health and social security, AUS] provision of health services and [, education IDN] ~~social protection programmes~~ [AUS], are non-discriminatory and take into account the needs of people at high risk and persons in vulnerable situations; ~~and~~
 - (iii) people living under any restrictions on the freedom of movement, such as quarantines and isolations, have sufficient access to ~~medication~~ [pandemic-related products THA], health services and other necessities ~~and rights~~ [IDN, AUS, THA];
 - [(iv) when addressing prevention, preparedness, response, and recovery, to respect the special needs of Indigenous People and vulnerable populations, including access to health services BRA, COL]
 - [; and (iv) ensuring that migrants, including the sea-based workers, are not left behind in multi-level and multi-disciplinary approaches;]

Limitations in emergencies must be:

1. law-based;
2. evidence-based;
3. directed toward the legitimate objective of protecting public health;
4. strictly necessary;
5. the least intrusive and restrictive means;
6. neither arbitrary nor discriminatory in application;
7. of limited duration;
8. subject to review.

As implied?

Undefinable
“persons in
vulnerable
situations”

Non-biomedical
determinants of
health

Whole-of-
government and
whole-of-society
approaches

Preamble

17. *Stressing* that adequate pandemic prevention, preparedness, response and health systems recovery is part of a continuum to combat other health emergencies and achieve greater health equity through resolute action on the social, environmental, cultural, political and economic determinants of health, and

Article 1. Use of terms

(b) “[One Health/one health] approach” means an integrated multisectoral approach that aims to sustainably balance and optimize the health of people, animals and ecosystems including by addressing various social, economic and environmental determinants of health in an equitable manner. It recognizes that the health of humans, domestic and wild animals, plants and the wider environment (including ecosystems) is closely linked and interdependent.

(g) “[persons (DEL)/(RETAIN)] [people] in vulnerable situations” means individuals, [as well as persons in] groups or communities with a disproportionate increased risk of infection, severity, disease or mortality [, as well as those likely to bear a disproportionate burden owing to social determinants of health] in the context of a pandemic. This is understood to include persons in fragile and humanitarian settings;

(2023) Article 1. Definitions and use of terms

- 1. For the purposes of this WHO CA+:
- (d) **“persons in vulnerable situations”** ~~includes~~ [include but is not limited to BRN, BGD] indigenous peoples, [persons belonging to national or ethnic, religious or linguistic minorities, DEL TUR] refugees, migrants, asylum seekers, stateless persons, persons in humanitarian settings and fragile contexts, marginalized communities, older people, persons with disabilities, persons with health conditions, pregnant women, infants, children and adolescents, and those living in fragile areas, such as Small Island Developing States[, among others ARG];
- individuals or groups at increased risk of infection or increased risk of severe disease within the context of a pandemic [during peace, conflict, and post-conflict situations PSE]
- [vulnerable and marginalized groups DEL, NGA, KSA, TUR, UGA, TOG] [people living in informal settlements KEN] [local communities IDN] [rural and remote communities PRY, USA, COL]
- [people under foreign occupation SYR, NAM, PSE] [prisoners, detainees PSE, COL] refugees, [displaced persons, AUS], migrants [and migrant workers BGD]
- those living in fragile areas, [developing and landlocked countries PRY] [, low- and middle-income countries PHL]
- [gender-diverse persons AUS, BRA/DEL KSA] [women and girls including those who are AUS, BRA] pregnant [women DEL AUS, BRA]

Article 6. Preparedness, readiness and health system resilience

2. Each Party, within the means and resources at its disposal, shall take appropriate measures, in accordance with its national and/or domestic law, to develop or strengthen, sustain and monitor health system functions and infrastructure for:

(a) the timely provision of equitable access to scalable clinical care and quality routine essential health care services, while maintaining public health functions and, as appropriate, social measures during pandemics, with a focus on primary health care, mental health and psychosocial support and with particular attention to persons in vulnerable situations;

Article 13. Supply chain and logistics

2. The Conference of the Parties shall, at its first meeting, define [by consensus] the structure, functions and modalities of the GSCL Network, with the aim of ensuring the following:

(a) collaboration among the Parties and other relevant stakeholders during and between pandemic emergencies;

(the issues of defining different relevant stakeholders might need further work)

(b) the functions of the GSCL Network are discharged by the organizations best placed to perform them;

(c) consideration of the needs of developing countries and the needs of [persons in vulnerable situations] [those in vulnerable situations] [vulnerable populations], including those in fragile and humanitarian settings;

(d) the equitable and timely allocation of pandemic-related health products, based on public health risk and need, including through procurement from the facilities referenced under Article 10; and

(e) accountability, transparency, and inclusiveness in the functioning and governance of the GSCL Network allowing for equitable representation of the WHO Regions.

Article 17. Whole-of-government and whole-of-society approaches

Article 17. Whole-of-government and whole-of-society approaches

1. The Parties are encouraged to apply whole-of-government and whole-of-society approaches at national level, including, according to national circumstances, to empower and enable community ownership, and contribution to, community readiness for and resilience to pandemic prevention, preparedness and response.
2. Each Party is urged to establish or strengthen, and maintain, a national multisectoral coordination mechanism for pandemic prevention, preparedness and response.
3. Each Party shall, taking into account its national circumstances:
 - (a) promote and facilitate the effective and meaningful engagement of Indigenous Peoples, communities, including local communities as appropriate, and relevant stakeholders, including through social participation, as part of a whole-of-society approach in planning, decision-making, implementation, monitoring and evaluation of policies, strategies and measures, and also provide feedback opportunities;
 - (b) take appropriate measures to mitigate the socioeconomic impacts of pandemics and strengthen national public health and social policies including those for social protection, to facilitate a rapid, inclusive, resilient response to pandemics, especially for compin vulnerable
 - (c) situations, including by mobilizing social capital in communities for mutual support.
4. Each Party shall develop, in accordance with national and/or domestic context, comprehensive, multisectoral, and, as appropriate, regional, and national pandemic prevention, preparedness and response plan(s) that address pre-, post- and interpandemic periods, in a transparent and inclusive manner that promotes collaboration with relevant stakeholders.
5. Each Party shall promote and facilitate, where appropriate, and in accordance with national and/or domestic law, and policy, the development and implementation of education and community engagement initiatives and programmes on pandemic and public health emergencies, with the participation of relevant stakeholders in a way that is inclusive and accessible, including to persons in vulnerable situations.
8. *Recognizing* the critical role of whole-of-government and whole-of-society approaches at national and community levels, through broad social participation, and further recognizing the value and diversity of the culture and traditional knowledge of Indigenous Peoples as well as local communities [including science and evidence-based traditional medicine,] in strengthening pandemic prevention, preparedness, response and health systems recovery.

Article 7. Health and care workforce

1. Each Party, in line with its respective capacities and national circumstances, shall take the appropriate measures with the aim to develop, strengthen, protect, safeguard, retain and invest in a multi-disciplinary, skilled, adequate, trained, domestic health and care workforce to prevent, prepare for and respond to health emergencies, including in humanitarian settings, while maintaining essential health care services and essential public health functions at all times and during pandemic emergencies.

2. Each Party, taking into account its national circumstances, and in accordance with its international obligations, shall take appropriate measures to ensure decent work, protect the continued safety, mental health, wellbeing, and strengthen capacity of its health and care workforce, including by:

(a) facilitating priority access to pandemic-related health products during pandemic emergencies;

(b) eliminating all forms of inequalities and discrimination and other disparities, such as unequal remuneration and barriers faced by women;

(c) addressing harassment, violence and threats;

(d) supporting individual and collective empowerment; and

(e) developing policies for work-related injury, disability or death during emergency response.

Article 26. Relationship with other international agreements and instruments

1. The interpretation and application of the WHO Pandemic Agreement shall be guided by the Charter of the United Nations and the Constitution of the World Health Organization.

2. The Parties recognize that the WHO Pandemic Agreement, and the International Health Regulations (2005) should be interpreted so as to be compatible.

[3. The provisions of the WHO Pandemic Agreement shall not affect the rights and obligations of any Party under other existing legally binding international instrument to which it is a Party, provided that the exercise of those rights and obligations is compatible with the objective of this instrument.

Alt 3. This Agreement shall not alter the rights and obligations of Parties which arise from other agreements compatible with this Agreement and which do not affect the enjoyment by other Parties of their rights or the performance of their obligations under this Agreement.]

Where have all the human rights clauses gone?

- From the innovative and creative employments of human rights languages to the downplayed significance of human rights along the negotiation processes
- Fortunately, mostly with initial agreement achieved
- Guided by:
 - States' sovereign rights
 - Dignity, human rights, fundamental freedoms, and the right to health
 - IHL for effective pandemic prevention, preparedness and response:
LOAC & IDRL (international disaster response law)
 - Equity
 - Solidarity
 - Evidence-based

