

For Immediate Release

Draft “Pandemic Treaty” Fails to Protect Rights

Member States Should Include International Human Rights Obligations in Negotiated Text

(New York, November 7, 2023) – World Health Organization (WHO) member states should push for clear commitments to human rights protections in the text of a draft “pandemic treaty” being negotiated on November 6-10, four rights organizations said today. The current draft fails to enshrine core human rights standards protected under international law, most notably the right to health and the right to benefit from scientific progress, therefore risking a repeat of the tragic failures during the Covid-19 pandemic.

The WHO’s Intergovernmental Negotiating Body is meeting to debate the draft of a new international instrument on pandemic prevention, preparedness, and response with the goal of addressing the failures of the Covid-19 response and preventing another global crisis. However, rather than acting on the [lessons learned](#) from the Covid-19 pandemic, the current proposed text offers a weak framework for ensuring that countries will be accountable for maintaining a rights-compliant response to future pandemics.

This is the position taken by four international human rights groups: Amnesty International, the Global Initiative for Economic, Social and Cultural Rights, the International Commission of Jurists, and Human Rights Watch.

“Creating a new pandemic treaty could offer an opportunity to ensure that countries are equipped with proper mechanisms for cooperation and principles to prevent the level of devastation wrought by the Covid-19 pandemic, and the rights violations resulting from government responses,” said Tamaryn Nelson, legal advisor at Amnesty International. “By failing to ground the treaty in existing human rights obligations and inadequately addressing human rights concerns arising during public health emergencies, governments risk repeating history when the next global health crisis hits.”

The drafting process has repeatedly failed to ensure effective and meaningful participation by all stakeholders, especially those from marginalized and criminalized communities. In early 2022, the Civil Society Alliance for Human Rights in the Pandemic Treaty drew attention to the [need to ensure full participation](#) in the drafting process. The negotiating body disregarded these calls. Instead, the draft reflects a process disproportionately guided by corporate demands and the policy positions of high-income governments seeking to protect the power of private actors in health including the pharmaceutical industry.

The current draft of the treaty includes only limited references to existing human rights obligations and compliance provisions, despite [repeated calls](#) from civil society to ensure a rights-based response to future pandemics.

For instance, the draft treaty says that requirements for preparedness, readiness, and resilience, are subject to “applicable laws” and “national laws.” But domestic law cannot be used as an excuse for failure to comply with provisions in international treaties to which governments are

party, or with customary international law. Even more concerning is that parties appear to be merely “encouraged” to “adopt policies, strategies and/or measures,” but not to “comply” with specific “laws.” This approach significantly weakens the accountability of governments to carry out preparedness, prevention, response, and recovery in accordance with international human rights law.

Existing international human rights law and standards should be explicitly referenced throughout the document, recognizing that they are core to an effective and equitable pandemic response, the organizations said. It should also incorporate developments in international human rights standards reflected, for example, in principles developed by the Global Health Law Consortium and the International Commission of Jurists in the “[Principles and Guidelines on Human Rights and Public Health Emergencies](#),” and the Civil Society Alliance’s “[Human Rights Principles For a Pandemic Treaty](#).”

“A global health architecture that puts profit-driven considerations at the center of global health decisions exacerbated the unprecedented magnitude of illness and death from Covid-19,” said [Julia Bleckner](#), senior health and human rights researcher at Human Rights Watch. “Certain higher-income countries effectively [hoarded vaccines](#) and blocked a proposal to share the vaccine recipe, while those in lower-income countries [died waiting for a first dose](#). An equitable and effective response to any future pandemic should ensure states carry out their obligation to, individually and collectively, regulate private entities to prevent them from undermining human rights.”

Human rights standards clearly establish that scientific progress must be available, accessible, acceptable, and of good quality to all individuals and communities. Governments must take steps to ensure that everyone can access the applications of scientific progress without discrimination.

While the current draft of the proposed instrument emphasizes the importance of knowledge and technology transfer in delivering fair and timely access to testing, vaccines, and therapeutics, it fails to adequately ensure that governments protect the rights to these critical health products during an emergency in accordance with international human rights law and standards. Instead, the draft uses weak language “encouraging” states to promote knowledge and technology transfer, diluting the legal obligation of governments to ensure that intellectual property rights do not constitute a barrier to the right to health and the right to benefit from scientific progress and its application, especially during a public health emergency. The draft therefore reads as an attempt to bolster intellectual property rights without any corresponding acknowledgment or appropriate weighting of, among others, the rights to health and to science.

The new treaty should reiterate that governments are required under international human rights law to strictly monitor and regulate private actors when they are involved in financing and the delivery of healthcare, ensuring that all their operations contribute to the full realization of the right to health. But the draft fails to incorporate the human rights framework on strictly monitoring and regulating private actors in healthcare, as well as preventing [any harmful impact of private actors’ involvement](#) in healthcare on governments’ capacity to effectively respond to pandemics. For example, the new text includes that state parties should “promote collaboration with relevant stakeholders, including the private sector” without clear human rights guardrails.

The Covid-19 pandemic was both a health and human rights catastrophe. Without clear and binding commitments to human rights law and standards leading up to and during public health emergencies, the crisis gave way to a ripple effect of human rights violations and abuses. Governments enforced lockdowns, quarantines, and other restrictions in ways that often were disproportionate to the public health threat and undermined human rights. In some cases, governments [weaponized public health measures](#) to discriminate against marginalized groups and [target activists](#) and opponents.

Yet the draft treaty fails to give governments virtually any guidance on how to comply with international law and standards, requiring that any restrictions of human rights in the context of such emergencies to be evidence based, legally grounded, nondiscriminatory, and necessary and proportionate to meet a compelling human rights threat. To the extent that restrictions undermine full enjoyment of economic and social rights, social relief measures to ensure the protection of those rights should also be put in place.

“The fact that the current draft of the text does not even repeat well established and existing standards in regard to legality, necessity, and proportionality of response measures is as disappointing as it is confounding. The result is a treaty that does not reflect the experience of individuals throughout the world who were subjected to human rights abuses in the name of public health response,” said Timothy Fish Hodgson, senior legal advisor at the International Commission of Jurists. “It is imperative that the negotiated text explicitly includes the necessary safeguards required under international human rights law when responding to a public health threat.”

The Covid-19 pandemic underscored the need for a social safety net and the consequences of failing to substantively account for the social and commercial determinants of health. While the current draft recognizes the ways in which the Covid-19 pandemic exacerbated inequalities, it does not explicitly commit governments to effectively protect the rights that guarantee key underlying determinants of health, including social security, food, education, housing, water, and sanitation, without discrimination.

In order to genuinely achieve its commitments to the principle of equity “at the centre of pandemic prevention, preparedness and response,” the Intergovernmental Negotiating Body should include in the draft explicit language on the obligations to proactively protect the rights of persons from marginalized groups, and to emphasize the human rights protections against discrimination.

“The global health response to the Covid-19 pandemic prioritized profit over the lives of the world’s most marginalized,” Rossella De Falco, programme officer on the right to health at the Global Initiative for Economic, Social and Cultural Rights said. “If countries are serious about preventing the inequities and loss of the Covid-19 pandemic, they will commit to a rights-aligned agreement for future pandemics.”

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