

PRIMER: PROMOTING HUMAN RIGHTS AND MEANINGFUL PARTICIPATION IN THE NEW PANDEMIC TREATY

13 December 2022

WHAT IS HAPPENING?

In December 2021, the World Health Assembly (WHA) [agreed to](#) develop a “WHO convention, agreement or other international instrument on pandemic preparedness” – the so-called Pandemic Treaty, or Pandemic Accord.

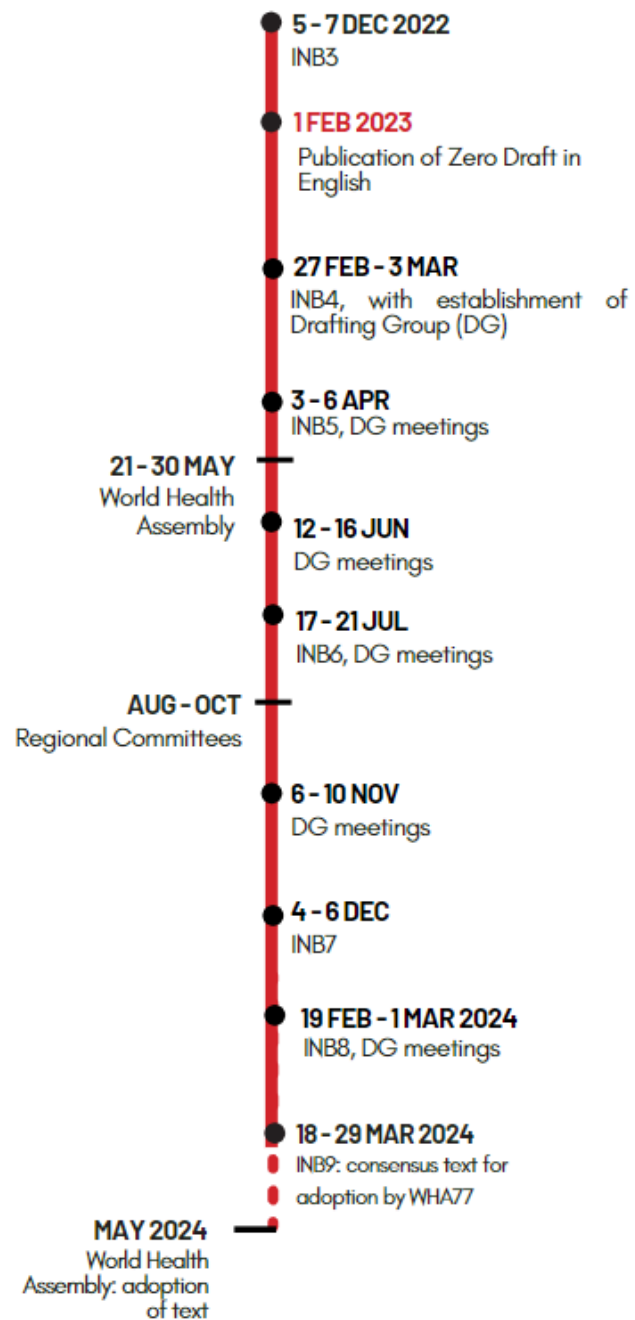
Negotiations are conducted under the auspices of an Intergovernmental Negotiating Body (INB), which held its first sessions in February and March 2022 to elect bureau officers and agree on working methods and timelines. **All WHA Member States are members of the INB.** The INB *Bureau* – whose role is to guide the negotiations - is composed of:

- Co-chair: Precious Matsoso, South Africa;
- Co-chair: Roland Driec, the Netherlands;
- Vice-chair: Tovar da Silva Nunes, Brazil;
- Vice-chair: Ahmed Soliman, Egypt;
- Vice-chair: Kazuho Taguchi, Japan;
- Vice-chair: Viroj Tangcharoensathien, Thailand

The second and third INB sessions were held in July and December 2022 - all documentation can be found [here](#).

During its third session, the INB reviewed and discussed the conceptual zero draft of the instrument, with an eye to informing the development, by the INB Bureau, of a Zero Draft – which will be published by February 1st, 2023.

The INB also agreed the new timeline set out in this [document](#) (and on the right), and to holding formal negotiations in a to-be-established “**drafting group**”. While the opening and closing sessions of the INB will be open to [relevant stakeholders](#) and webcasted, participation in the drafting group will be limited to Member States, plus Palestine and the Holy See (“unless otherwise agreed by the INB”), and proceedings will not be webcasted or otherwise publicly accessible.



MEANINGFUL PARTICIPATION AND CONSULTATION

All interested stakeholders have a right to participate in international fora, grounded in international human rights law and [standards](#). This right entails that the ‘Pandemic Treaty’ be developed through a robust participatory process allowing for the full, equal, meaningful, and effective participation of civil society and community organisations at global, regional and domestic levels; also in light of the essential contribution that civil society plays in pandemic prevention, preparedness and response. Particular attention should be paid to vulnerable, marginalised and criminalised communities, which have been disproportionately impacted by

COVID-19 and related responses, and whose opportunities to engage with authorities at the national level are normally limited.

Throughout 2022, formal opportunities for engagement by communities and civil society proved quite tokenistic: public hearings did not allow for interaction with Member States, civil society and communities were largely absent from the informal focused consultations; and inclusion in 'Annex E' as relevant stakeholders is mediated by Member States – meaning marginalised and criminalised groups and actors who are not well connected with Delegations are unlikely to be acknowledged as such.

Significant obstacles remain for 2023: no public hearings nor informal consultations are scheduled, and no opportunities are provided for either participation in and monitoring of 'drafting group' proceedings. As such, meaningful inclusion in the process seems impracticable, and advocacy with Member States at the national and international level seems the most direct available route for engagement.

The INB, and its Members, should also be encouraged to promote a review of its working methods, with an eye to making the process more accessible and inclusive; among others, they should be urged to:

- Ensure the Bureau publishes all relevant documents in a timely and transparent manner;
- Remove, as a matter of urgency, the requirement that only organisations in official relations can participate in the process, and that inclusion in 'Annex E' be mediated by Member States proposal;
- Hold consistent regional and national consultations and briefings with communities and civil society;
- Address the fundamental differences between civil society and the private sector, and keep problematic private actors outside the treaty-making process;
- Create feedback channels to communicate clearly how civil society and community contributions feed into the process on an ongoing basis;⁴
- Consider providing flexible funding to enable civil society and communities to participate, including under-represented groups, especially from the Global South.¹

Participation in the negotiation process

Diverse stakeholder engagement and advocacy in the development and ongoing refinement of the 'Pandemic Treaty' will be critical towards ensuring a whole-of-government and whole-of-society approach to pandemic prevention, preparedness and response. Immediate actions:

- » Engage with your Ministry of Foreign Affairs and Ministry of Health, as well as with your Delegation in Geneva, to shape your country's position; recommend including community and civil society members in country Delegations to the INB;
- » Promote the organisation of informal briefings and national consultations on the Pandemic Treaty;
- » Develop and disseminate recommendations on the Zero Draft of the agreement, and on the negotiation process, and share them with Member States as well as other involved stakeholders.

DURING THE NEGOTIATIONS: MAINSTREAMING HUMAN RIGHTS

Member States should **ensure human rights guarantees are central to the Treaty**, and included not only in the guiding principles of the instrument, but also in its operative parts. Among others, this entails:

- a) Strengthening human rights protections in prevention, preparedness and response to pandemics (PPPR), also as a way to ensure effective health responses;
- b) Protection, promotion and empowerment of vulnerable, marginalised, and criminalised communities in PPPR, including by ensuring meaningful participation in national health processes;
- c) Promoting meaningful engagement of communities and civil society in pandemic as well as Pandemic Treaty governance.

To support negotiations and advocacy, a broad coalition of NGOs and experts has developed a set of Human Rights Principles for a Pandemic Treaty, which can be [accessed here](#). These Principles can be a useful reference for crafting inputs and recommendations to the INB.

In addition, several organisations have developed recommendations on how to improve the language of the ‘conceptual zero draft’, with a focus on strengthening human rights protections and ensuring the needs and expertise of marginalised and criminalised communities are taken into adequate consideration. These recommendations can be a useful starting point to review the Zero Draft, once published, and advocate for changes. Some examples (more recommendations, and the related briefings, can be found in [this folder](#)):

- In Art 4(18): Proportionality – Due consideration should be given [...] to ensuring that the impacts of measures aimed at preventing, preparing for and responding to pandemics are proportionate to their intended objectives. *[ADD: Any measures to protect public health in the context of pandemics must be necessary and proportionate, designed and implemented in a non-discriminatory manner. States must enable and support people to adhere to public health measures and accompany any such measures with safeguards to mitigate any disproportionate effects that they may have on marginalized groups. Any such measure must be based on the best available evidence and aimed to fulfil the right to the highest attainable standard of health. The coercive enforcement of measures to protect public health should be considered only as last resort]* (recommendation by Amnesty International)
- In Art 11: Strengthening and sustaining a skilled and competent health workforce - The Parties [shall]/[should] strengthen and sustain an adequate, skilled, trained, competent and committed health workforce *[Add: including community-led and peer-based workforces]*, with due protection of their employment, civil and human rights and well-being, consistent with relevant codes of practice, including at the frontline of pandemic prevention, preparedness, response and recovery of the health system. (Recommendation by International Network of People who Use Drugs)
- In Art 14 (2)(b): Tackle the social, environmental and economic determinants of health that contribute to the emergence and spread of pandemics, and prevent or mitigate the socioeconomic impacts of pandemics, [...] and especially for persons in vulnerable situations. *[ADD: Measures should be free from discrimination, and remove all barriers to their access, including barriers created by legal regulations, such as the criminalization of identities, choices and status]* (Recommendation by Amnesty International)

ⁱ From OHCHR Advocacy Note (Dec 2022), “Hearing Civil Society Voices in International Treaty-making”, available upon request.