

NOTICE TO THE WHO AND THE UNITED NATIONS

PUBLIC PARTICIPATION

URGENT

DATE: 27/05/2024

1. Notice of Urgent Declaration of Invalidity

on the ultra vires conduct of the World Health Organisation
evidenced further by conflicts of interest in private funding.

2. Notice of Urgent Statement of Dispute

on the responsibility of the World Health Organization to respect the rule of law
in terms of Article 55(2) of the International Health Regulations (2005).

3. Notice of Urgent Objection to related United Nations declaration

Ignoring diplomatic values in the functioning of the United Nations
As it relates to a political declaration on pandemics, non-binding.

TO: Dr. Tedros Adhanom Ghebreyesus: Director-General: World Health Organisation:
drtedros@who.int / mediainquiries@who.int

TO: Antonio Guterres: Secretary General - United Nations:

dujarric@un.org / Gueterres@un.org / GuterresA@un.org / Antonio.Guterres@un.org

CC: All Member State Representatives **and** Civil Society Internationally

TRANSFORMATIVE HEALTH JUSTICE, WORLD COUNCIL FOR HEALTH SOUTH AFRICA,
CHILDREN'S HEALTH DEFENSE AFRICA, AND AFRICAN SOVEREIGNTY COALITION note with
concern that the WHO and member state delegates are by law and by ethics expected to
uphold universal values, international law, human rights and fundamental freedoms. We

therefore request that this declaration of invalidity, statement of dispute, and urgent objection are included in the preliminary and final report of the WHA 77 record in 2024.

We note further that the WHO's World Health Assembly 77 began 27 May 2024. The WHA 77 agenda item on the IHR 2005 and new pandemic treaty has not been deferred, which is clearly what member state delegates and a significant number of civil society want. We refer to a petition by CitizenGo which over 2 million people have signed. Regardless, it appears plausible that negotiation and/or voting on the two instruments will take place at WHA 77.

A. Dispute Resolution

Member states and civil society are entitled and empowered to raise disputes or concerns with the UN and WHO. The UN and WHO, employees, and member state representatives, have an obligation to respond through the following mechanisms, including, but not limited to:

1. Direct communication with the WHO Director-General, UN Secretary General or relevant departments heads who are lawfully and publicly mandated, in writing.
2. Participation in WHO governing body meetings, such as the World Health Assembly or the Executive Board,
3. Engaging in diplomatic negotiations and consultations with other member states and WHO officials to resolve disputes amicably.
4. If a dispute remains unresolved, member states may escalate the matter by requesting formal mediation or arbitration through established mechanisms within the WHO governance structure.
5. The WHO Constitution and related legal instruments provide a framework for addressing disputes and conflicts among member states, emphasizing diplomacy, dialogue, and consensus-building to achieve resolution.

B. Participation in decision-making

1. The WHO's Constitutional principle on participation (contained in its Preamble) is that "informed opinion and active cooperation on the part of the public are of the utmost importance in the improvement of the health of the people."
2. The Alma Ata Declaration: Public participation plays a crucial role in shaping health policies, programs, and interventions at the global level. The Alma Ata Declaration has been instrumental in advocating for community involvement in healthcare decision-making and promoting the principles of primary healthcare.
3. The WHO must promote community empowerment, participatory approaches, and multi-sectoral collaboration to address the social determinants of health and promote health equity. The WHO must encourage member states to involve communities in health policy development, program planning, and service delivery to ensure that interventions are responsive to local needs and priorities.

4. World Health Organization (WHO) faces legitimate criticism for consistently falling far short of the Alma Ata Declaration. This includes ongoing secretive negotiations on two documents: amendments to the International Health Regulations 2005, and the proposed new pandemic treaty / accord / agreement. There has been little to no public participation both at WHO and member state level.
5. The WHO faces criticism for deviating from the Alma Ata principles, for example:
 - Top-down approaches: Observers and civil society raise concerns about the WHO's centralized decision-making processes and bureaucratic structures, which may hinder meaningful engagement with local communities and grassroots organizations. Critics argue that top-down approaches overlooks community perspectives and preferences, leading to the implementation of one-size-fits-all interventions that may not be culturally or contextually appropriate.
 - Political and economic influences: The WHO operates within a complex geopolitical landscape, where political considerations and power dynamics can influence its agenda-setting and decision-making processes. Critics have accused the organization of prioritizing the interests of powerful member states or donors over the health needs of marginalized communities, compromising its ability to advocate for health equity and social justice.
6. Did the WHO abide by Alma Ata during negotiations on the proposed new pandemic treaty? No. The Alma Ata Declaration emphasizes the importance of community participation, and accessibility in healthcare, which are relevant considerations for any global health treaty, including one aimed at addressing pandemics. Therefore, the WHO violated and violates the Alma Ata Declaration.

C. Declaration of Invalidity: Resolutions on IHR 2005 and a new pandemic treaty

1. Member States are not authorized pursuant to the Constitution and/or the legal system of the Member State to delegate its legislative and/or executive powers to the Director-General of WHO to declare a pandemic or another emergency situation, nor for the WHO DG to instruct measures to be taken by the Member State.
2. The World Health Assembly is not authorized to adopt amendments to the International Health Regulations (2005) and/or any Pandemic Agreement granting the self-authorizing executive powers to the Director-General of WHO because this exceeds the powers of the World Health Assembly and violates national sovereignty.
3. The Constitution of the WHO provides that WHO can give non-binding advice relating to public health to Member States, but Member States are themselves responsible for the health and wellbeing of their people. Therefore the WHO cannot act *ultra vires*, nor can member states be sanctioned for self-determination and non-compliance.

D. Dispute: Violation of IHR 2005 – Article 55 (2) and the unlawfulness of voting processes

1. The adoption of amendments to the IHR are being rushed in an unlawful and shocking manner, a diplomatic disaster attracting increasing international scrutiny and controversy. Article 55(2) of the IHR includes the clear procedure for amending the IHR: The text of any proposed amendment shall be communicated to all States Parties by the Director-General at least four months before the Health Assembly at which it is proposed for consideration.

2. The deadline for the WHO's Director-General to circulate the package of proposed amendments to the IHR 2005 to State Parties, lawfully, in advance of the 77th WHA in May 2024, was 27th January 2024. And yet, the IHR text is still being recklessly and lawlessly negotiated, with a not yet final (draft) version released to the public in mid-April 2024.

3. Neither the Working Group on the IHR amendments (WGIHR) nor the Intergovernmental Negotiation Body (INB) have finished the negotiations of their respective instruments, and final versions of the proposed amendments to the IHR nor the new pandemic agreement are not available to State Parties of the WHO, nor to the public they answer to. Thereby, the WHO-Secretariat, the INB and the WGIHR also act in violation of the WHA Rules of Procedure.

4. As such, the agenda item of passing amendments to the IHR cannot be legitimately tabled at the 77th WHA. Tabling it without complying with the requisite four-months rule would jeopardise procedural justice, democratic legitimacy, and equitable outcomes.

5. The review time is essential for each state party to assess national health, financial, legal and human rights implications, and the abrogation of this rule by WHO disproportionately discriminates against lower-income countries with fewer resources to rapidly assess such consequences.

6. The Pandemic Agreement, also under negotiation, was intended to be delivered by 29th March 2024, for a similar intent of providing time for reflection prior to commitment. Similarly, member state delegates have complained about being rushed and pressured.

7. Moreover, practical problems arise concerning evidence of voting on the last set of IHR 2005 amendments in 2022. There is no evidence whatsoever that a lawful vote took place.

8. In addition, the timely translation of both these documents, at least, into the official languages of the WHO, is a necessary requirement to ensure fair, equal and transparent member state participation in the deliberations at the WHA, by all delegations.

E. Objection: The related United Nations political declaration on pandemics

1. The U.N held its [SDG Summit](#) and its 78th General Assembly during September 2023. Curiously, at the top of its agenda for the 19th and 20th, was, inter alia, the adoption of a [high level political declaration](#) on pandemic prevention, preparedness, and response.
2. The declaration was due to be adopted via '[silence procedure](#)': If a country's delegate did not object to the declaration, they would be deemed to accept it in full. This silent procedure is a tool that outlived its utility and is clearly a dangerous practice that is not supported.
3. Dated 17 September 2023, eleven (11) countries sent an articulate [three page letter](#) to the UN GA president Dennis Francis and UN secretary-general Antonio Guterres, objecting to [unilateral coercive measures](#) and violations of human rights and international law.
4. Ignoring the official letter to the U.N, the WHO Director-General Adhenom Tedros Ghebreyesus stated "As you know, the *193 Member States of the United Nations approved the political declaration on pandemic prevention, preparedness and response*"
5. Meanwhile, unperturbed by what eleven member states communicated in the letter, UN Secretary-General Antonio Guterres said, in a [message delivered](#) by Deputy Secretary-General Amina Mohamed (Britain-Nigeria): "By next year's World Health Assembly in May, I urge all countries to deliver a strong, comprehensive pandemic accord, focused on equity, as well as amendments to strengthen the International Health Regulations. And I urge you to support the World Health Organization, including by honouring the *commitment to increase assessed contributions to half of its budget, and supporting the proposed investment round.*"
6. The UN is acting in violation of its laws and ethics, encouraging the WHO to violate its laws and ethics. This practice must be robustly challenged by member states and civil society.

F. Appeal: Do not negotiate, resolve or vote on IHR amendments and a new pandemic treaty

1. Multiple letters by member states, politicians and civil society with objections to these 2 instruments have been ignored by the WHO, and by extension, the WHA. These letters requested conclusive and unambiguous EVIDENCE, that the vote of WHO's 8th plenary meeting 28 May 2022 (WHA75.12; Agenda item 16.2) on IHR 2005 amendments was executed by a majority of the Members present, and voting as foreseen under Art. 21 in conjunction with Art. 60 lit. (b) WHO Constitution. These letters were not responded to.
2. In light of all the above, we call on the WHO and WHA to immediately cease and desist with unlawful non-compliance with IHR Article 55(2) and the Rules of Procedures. There is no longer a lawful way to adopt any proposed amendments to the IHR at the 77th WHA, nor can the proposed pandemic treaty, with a scope *ratione materiae* and an institutional framework overlapping with the IHR 2005, be adopted with integrity and transparency.
3. The adoption of both instruments must be postponed *sine die*, safeguarding the international rule of law, and procedural and outcome fairness, by allowing proper input

and robust deliberation. This must include public participation at member state level.

4. If the vote proceeds, we will advocate to vote NO to the adoption of both instruments, and we will mobilise together with allies against ratifying these agreements nationally. We further intend, with international allies, to mobilise tirelessly to withdraw from the WHO.

We anticipate your cooperative response upon receipt of this Declaration of Invalidity, Statement of Dispute, and Notice of Objection, or by Tuesday 28 May 2024.

Thank you in advance for your responsible cooperation.

Shabnam Palesa Mohamed (signed electronically)

The following attached documents are of additional relevance:

1. Advisory to the Africa Group by the President of the Republic of South Africa:
 - a) Highlighting negotiation irregularities, and b) Advising the Africa group to request an extension, or to consider standing down from the Intergovernmental Negotiating Body.
2. Front page of the CitizenGo petition, with more than 2 million people's signatures.

Note: *This document is facilitated through the African Sovereignty Coalition with the three allied organisations listed in this document and with other international allies. Email queries or to support the letter / document: AfricanSovCo@proton.me / Info@THJ-Africa.org.za*

ANNEXURE 1



THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

Private Bag X1000, Pretoria, 0001, Tel: 012 300 5200 / Private Bag X 1000, Cape Town, 8000, Tel: 021 464 2100

ADVISORY: THE PANDEMIC ACCORD FOR GLOBAL PANDEMIC PREVENTION, PREPAREDNESS AND RESPONSE (PPPR)

1. The World Health Assembly's Intergovernmental Negotiating Body (INB) mandate to draft and negotiate a WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response is in its final phase before submitting its outcome for consideration by the Seventy-seventh World Health Assembly scheduled for the 27th May – 1st June 2024. The Ministers of Health of the Africa Group further endorsed this at a meeting in Addis Ababa on the 27th of April 2024.
2. While there is an acknowledgment of ongoing and positive progress in the negotiations, consensus on a number of critical areas for Africa remain outstanding. These issues include, *inter alia*:
 - a. Process and the instrument under which the agreement will be adopted;
 - b. Technology transfer and intellectual property of pandemic related health products;
 - c. Pathogen access and benefit sharing system (PABS);
 - d. One Health Approach;
 - e. Institutional arrangements and Conference of the Parties (COP);
 - f. Financing of the Pandemic Agreement; and
 - g. No Fault Compensation.
3. The Africa Group has thus far been negotiating as a cohesive unit, guided by the Common Africa Position. The President (in his capacity as Champion on COVID-19) issued the Position that was adopted by the AU Assembly in February 2024 to Ministers, Ambassadors and Negotiators.
4. The Common Africa Position emphasizes the importance of legal assurance that the Pandemic Treaty will deliver equity for Africa. Without the operationalization of equity within the proposed instrument, Africa will not be able to access vaccines, diagnostics, and therapeutics when the next pandemic strikes and it will not be able to finance or technically support and meet the obligations in the proposed instrument. This can result in perpetuating the current devastating health, social and economic consequences for African people and the continent as an economic block.
5. The common position **mandates the Chairperson of the African Union**

ANNEXURE 2

citizengo.org/en-af/ot/13140-Your-Last-Chance-to-Stop-the-WHO-Pandemic-Treaty---The---Million-Petition?utm_medium=shar...



Your Last Chance to Stop the WHO Pandemic Treaty - The 3 Million Petition



2,409,053 have signed.

Let's get to 5,000,000



Sign this petition!

Ann Kioko started this petition to Delegates and World Health Organization Representatives, - 2024/05/21

We've reached the final countdown with the WHO Pandemic Treaty.

In just a few days, our lives could change forever.

To the African presidents, Ministers of Foreign Affairs, and World Health Organization Representatives.