

Why States Must Ensure Full, Meaningful and Effective Civil Society Participation in developing a Pandemic Treaty

And what the WHO Intergovernmental Negotiating Body needs to do to make this happen

The Civil Society Alliance for Human Rights in the Pandemic Treaty

We write as part of an informal “Civil Society Alliance for Human Rights in the Pandemic Treaty” (“the Alliance”), which brings together a range of experts, jurists, medics, researchers, as well as national, regional and global organizations and networks, including those that are community-led. We have witnessed and documented the lived realities of the impact of the COVID-19 pandemic upon communities across the world, and highlight the disproportionate impact of COVID-19 on marginalized, disadvantaged and criminalized persons.

The Alliance has developed and disseminated a set of [Human Rights Principles for a Pandemic Treaty](#), aimed at advocating for a treaty and treaty drafting process that are consistent with human rights law and standards. The first of these principles is that the Pandemic Treaty should be developed through a robust participatory process allowing for the full, equal, meaningful and effective participation of civil society and community organizations on global, regional and domestic levels.

The Right to Participation is an Established Principle Under International Human Rights Law

Under international human rights law, the right to participation is necessary to amplify the voices of those who would otherwise not be heard in the multilateral stage. This right is inextricably linked with the right to take part in the conduct of public affairs and the rights to freedom of expression and access to information, peaceful assembly and association. These rights are protected by the [International Covenant on Civil and Political Rights](#), which has 173 States Parties. This right is also protected by a range of other widely ratified international treaties, including the [Convention on Economic, Social and Cultural Rights](#), the [Convention on Elimination of All Forms of Discrimination Against Women](#), the [Convention on the Rights of the Child](#) and the [Convention of the Rights of Persons with Disabilities](#).

These rights are also reinforced by most regional human rights treaties and various UN declarations (such as the [Declaration on Human Rights Defenders](#) [Declaration on the Right to Development](#), and the [Declaration on the Rights of Indigenous Peoples](#)). Similar attention has been drawn to the importance of consultation and participation by the United Nations in a Guidance Note on the [“Protection and Promotion of Civic Space”](#).

The World Health Organization and its Mandate on the Right to Health

The World Health Organization (WHO) was the first United Nations agency to have a mandate to address the [right to health](#) and define it expansively as a right to the highest attainable standard of health. The WHO has further recognized that this right includes both access to health care and addressing underlying determinants of health. In advancing human rights in public health, the WHO notes that the right to health requires participation of [“concerned stakeholders including non-state actors”](#).

States look to the WHO for guidance and direction on public health policies, even more so during public health emergencies such as those brought on by the pandemic. Despite the efforts of the WHO since the outbreak of COVID-19, the pandemic's devastating and disproportionate impact has been widely reported and documented. For this reason, it is more appropriately described as a "syndemic" based on the biological and social interactions that have determined the global impact and experience of COVID-19, particularly by marginalized, disadvantaged and criminalized persons. WHO's own mandate on the right to health calls for addressing these inequalities in access to health care and underlying determinants of health.

The Intergovernmental Negotiating Body's Process

Thus far, the Intergovernmental Negotiating Body (INB), tasked with drafting and negotiating the Pandemic Treaty, has clearly indicated that non-State actors will be able to participate in various aspects of the drafting process. While allowing for the participation of non-governmental organizations in particular is welcome, the Alliance expresses concern that, for the significant majority of the process, the participation of non-State actors will be [limited to those in official relations with the WHO](#). This limitation alone severely and unjustifiably curtails the ability of civil society organizations, including community-led organizations, to have full, meaningful and effective participation in the process. As of April 2022, only 200 organizations are [in official relations with the WHO](#). The great majority of these organizations are international, with limited representation from local and community-led entities or networks.

In expanding participation in the Pandemic Treaty, it is encouraging that the INB has indicated that it will hold two sets of [two-day public hearings in April and June 2022](#), and the WHO has [more recently revealed](#) that civil society organizations "with relevant knowledge, experience and/or expertise related to pandemic preparedness and response" will be allowed to attend and make written contributions. However, the very short amount of time allocated to receiving such input is thoroughly inadequate to ensure the full and meaningful consultations of civil society organizations, including community-led organizations, across the globe. The insufficiency of the allocated hearings is exacerbated by the INB's apparent intention to consult a full range of non-state actors together, including importantly both corporate and non-corporate entities (such as non-governmental organizations).

The Alliance calls on the INB to align with good practices in treaty development, global health institutions and human rights law to craft a treaty-making process that is inclusive and participatory.

Good Practices on Consultation within Treaty-Making

Transparent, full, meaningful and effective consultation processes that engage with a wide range of civil society actors and community-led organizations are long standing good treaty drafting practices, including:

- [The 2013 Minamata Convention on Mercury](#), in which NGOs played a key role in the drafting of a legally binding treaty aimed at protecting "human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds". Civil society organizations, individually and jointly through alliances, worked alongside Member States from the outset – and throughout – the negotiation process, and continue to play a critical role in monitoring the implementation of the treaty and calling for its amendment.

- [The 2006 Convention on the Rights of Persons with Disabilities](#), which actively engaged civil society organizations, including organizations of people with disabilities. Over 400 such groups had the same speaking and voting rights as government representatives on the Ad Hoc Committee that drafted the Convention. These groups had the right to attend meetings of the Committee, intervene in plenary, receive copies of official documents and make written and oral presentations. The UN General Assembly adopted two important resolutions that provided for separate accreditation processes to facilitate the effective participation of disability rights organizations who did not previously have ECOSOC accreditation.
- [The 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction](#), which was spearheaded by a group of NGOs under the banner of the International Campaign to Ban Landmines that eventually came to represent more than 1000 NGOs across 60 countries. In an effort to democratize the international lawmaking process, NGO engagement sought to create an international civil society that expanded international negotiations and pressed states to act.
- [The 1989 Convention on the Rights of the Child](#), which included NGOs as active participants in treaty drafting, engaging them through written and oral interventions and as part of the “Informal NGO Ad Hoc Group on the Drafting of the Convention on the Rights of the Child”.

In general human rights treaties are negotiated by Open-Ended Working Groups established by the Human Rights Council, which are automatically open to all NGOs accredited by ECOSOC, in terms of [ECOSOC rules](#).

The Right to Participation is a Core Component of Global Health Governance

The right to participation, including the right to full, effective, and meaningful consultation, has been a long-standing standard under international human rights law and is now widely accepted within global health governance..

Civil Society Engagement in Global Health

Within global health, the [Alma-Ata Declaration](#) confirms that “people have the right ... to participate individually and collectively in the planning and implementation of their health care” – a principle that echoes the WHO’s [Constitution](#). This broad statement has been further interpreted and applied by the WHO [which has described social participation](#) as a “key driver of health equity”, which also acknowledged that reduced levels of social participation create a range of problems including: “limi[ting] opportunities to detect the specific needs of social groups”; “bias[ing] political decisions in favour of the most advantaged social groups”, “dismiss[ing] population knowledge about their own needs”; “exclud[ing] the groups with the highest level of health disadvantage in decisions affecting their health”; and “imply[ing] fewer mechanisms of public control and accountability”.

Meaningful consultation with civil society organizations is the standard at other leading global health institutions and global health governance processes. [UNAIDS](#) and the [Global Fund](#), for example, have integrated permanent civil society representation directly within their governance boards, and routinely consult with civil society and affected communities at national and regional levels in developing their strategies and policies. Within WHO, the [Partnership for Maternal, Newborn and Child Health](#) also integrates civil society constituencies within their work. At the

Member State-level, the Political Declarations [on HIV/AIDS](#), as well as the [Political Declaration on Tuberculosis](#), have involved the robust participation of civil society and community-led organizations. These processes align with Article 71 of the [UN Charter](#), specifically mandating ECOSOC to “make suitable arrangements for consultation with nongovernmental organizations which are concerned with matters within its competence” on both an international and domestic level. UN member states further committed to upholding participation rights through the [Sustainable Development Cooperation Framework](#).

Recommendations for the INB and Member States

As illustrated above, States, in accordance with international standards, should widely consult a broad range of civil society and community-led organizations on global health governance issues, including in treaty drafting processes. This includes ensuring full, meaningful and effective participation of all civil society and community-led organizations – irrespective of preexisting relationships with the drafting body – in all aspects of the treaty drafting process. The Civil Society Alliance for Human Rights in the Pandemic Treaty requests that the INB takes all necessary steps to adjust its “proposed modalities of engagement for relevant stakeholders” to ensure full, meaningful and effective participation in the negotiation and drafting process for the Pandemic Treaty, including:

1. **Removing the requirement that only organizations with official relations can participate in all aspects of the treaty drafting processes.** If any accreditation is required for participation in treaty drafting processes, ensure the facilitation of an accessible, simple method of expedited accreditation for civil society organizations in particular.
2. **Facilitating significant opportunities for a broad and representative range of civil society and community-led organizations to participate fully in all INB meetings,** whether substantive or procedural in nature, both in person and remotely, allowing sufficient time in all meetings for oral inputs. Amongst other things this could include holding consistent regional consultations or discussions.
3. **Setting up a process by which ample and consistent opportunities are provided to a broad and representative range of civil society and community-led organizations** to input written statements and recommendations to the INB.
4. **Meaningfully, widely, fully and effectively consulting a broad range of civil society and community-led organizations about the desirable length, dates, platforms** and all other aspects of the proposed “public hearings” and “regional consultations” in order to ensure full, meaningful and effective consultation.
5. **Scheduling regular briefings for civil society and community-led organizations to fully them as to avenues for participation** in all INB processes and the treaty drafting process more generally.
6. **Providing timely access to documents,** such as draft provisions of the treaty and draft documents setting out modalities and timelines for the treaty drafting process.
7. **Providing, wherever necessary, interpretation and other services and accommodations needed,** including for persons with disabilities, to ensure that all persons can enjoy full, meaningful and effective participation on a continuous basis.