



ARTICLE 19's comments on the "Zero Draft" of the WHO Pandemic Convention

The World Health Organisation (WHO) is currently discussing a new global agreement, the so-called WHO Pandemic Convention, that will outline how to prevent and tackle the next pandemic. ARTICLE 19 is concerned about several aspects of the proposed draft, in particular the section on 'infodemic', which contradicts existing international freedom of expression standards. We are also concerned that the drafters fail to recognise the importance of right to information in the context of public health protection. As the recent Covid-19 pandemic showed, any response to major health crisis must be based on protection of the right to information as a key component for ensuring public awareness and trust, fighting misinformation, ensuring accountability as well as developing and monitoring implementation of public policies.

ARTICLE 19 therefore calls on the drafters to seriously reconsider the provisions on the 'infodemic' and remove them from the draft. Instead, the text should include the recognition of the critical role of the right to information in the context of a pandemic. Moreover, transparency obligations and the respect for the right to information should extend not just to state institutions but also to the private sector and the WHO itself. Finally, media and digital literacy provisions should be strengthened, as they constitute effective measures to effectively respond to a disease outbreak.

In 2021, in the midst of the Covid-19 pandemic, the WHO [established](#) an Intergovernmental Negotiating Body (INB) to draft and negotiate a new 'pandemic convention' with the aim of making sure countries are better prepared for future outbreaks. In June 2023, the INB published the Zero Draft of this convention. In December 2023, governments completed the review of the [pandemic agreement Negotiating Text](#) (the Draft Text) presented by the Bureau of the INB. The final version of the Draft will be presented to the 77th World Health Assembly in May 2024.

The Draft Text focuses on pandemic prevention, preparedness, and responses and addresses gaps that were highlighted by the Covid-19 pandemic. To do so, it sets forth state obligations around international collaboration, funding, and governance, and introduces and strengthens oversight mechanisms to increase trust, ensure accountability and foster transparency.

During the pandemic, ARTICLE 19 addressed threats to freedom of expression around the world. We also monitored the impact of the emergence and implementation of laws on disinformation and the right to information and produced documents and policy briefs based on international and comparative law on issues concerning [freedom of expression](#) and the [right to information](#). We continue to monitor and report on government overreach, and to urge governments and other actors to ensure human rights, including the right to free expression, are fully protected as parts of efforts to deal with Covid-19 and other pandemics.

Therefore, ARTICLE 19 appreciates the inclusion of respect for human rights and transparency as general principles of the Draft Text (in Article 3). We believe it is crucial that an international pandemic instrument recognises the importance of protecting human rights in times of emergency and that effective prevention, preparedness and responses to pandemics depend on timely access to and disclosure of information.

We also welcome that the Draft Text includes positive obligations related to

- developing transparent, effective and efficient pandemic prevention, preparedness and response monitoring and evaluation systems (Article 8);
- sharing information through open science approaches, dissemination of information, and transparency in the research and development of pandemic-related products (Article 9);
- developing multilateral mechanisms that promote technology transfer and know-how for the production of pandemic-related products and ensuring manufacturers are strategically and geographically distributed in order to maximise access for countries that have less manufacturing capacity (Article 11).

ARTICLE 19 is, however, seriously concerned about several provisions of the Draft Text that completely disregard international standards on freedom of expression and information. We elaborate on these concerns below, noting that we only focus on the areas of our expertise (freedom of expression and information). Not commenting on all provisions of the Draft Text does not mean that we are endorsing those provisions.

ARTICLE 19's concerns about the Draft Text

ARTICLE 19 has identified five key issues of concern in the Draft Text.

1. The commitment to protect human rights does not refer to freedom of expression and information

The Draft Text includes “respect for human rights” among its general principles in Article 3. While we find this a commendable recognition, we note that the text of Article 3(1) does not include any specific mention of the right to freedom of expression and information.

As we have seen during the Covid-19 pandemic, information was essential to ensuring effective responses to Covid-19, including the compliance with public health measures by the public. Freedom of expression and information has been acknowledged as being crucial to identifying and responding to human rights challenges posed by pandemic related restrictions.

Therefore, ARTICLE 19 suggests that the Convention must explicitly refer to the right to freedom of expression and information in Article 3(1), given the core role of this right in the context of the pandemic and any public health crisis. Respect for freedom of expression should constitute the basis to draft any provision that applies during a health crisis, as we outline in further details below.

2. The Draft Text fails to include measures to guarantee and enforce the right to information

Apart from not mentioning freedom of expression and information as one of the bases for pandemic responses, the Draft Text fails to enumerate specific states' obligations on the right to freedom of expression and information during the pandemic.

We note that Article 18(1) states that the parties to the Convention should "strengthen... access to information on pandemics and their effects and drivers," but fails to elaborate further any obligations on access to information specifically.

Further, the need for "transparency" is mentioned in several instances (e.g. para 31 and 36 of the Preamble or in Article 4.6. - Guiding principles and rights). However, there are no specific provisions outlining relevant measures that states should adopt.

ARTICLE 19 believes that this is a key shortcoming. As we have seen during the Covid-19 pandemic, accessing information in a timely manner is critical to informing the actions of individuals, communities and public health professionals. It is also necessary for the public and the media to understand whether governments' responses are appropriate for protecting and safeguarding people in vulnerable positions, groups, or communities. At the same time, we have observed how official denials and withholding of information fuel disinformation, whether malicious or merely ill-informed.

In order to address this gap in the Draft Text, the Convention should explicitly include the following obligations on the right to information during the pandemic:

- **The obligations to adopt comprehensive right to information laws:** These laws should be guided by the principle of maximum disclosure, in compliance with international standards on the right to information and best practices, and informed by model right to information laws developed by regional organisations. At a minimum, these laws should have a broad scope covering all public bodies and those receiving public funds, clear processes for responding to right to information requests and right of appeal against disclosure, obligation of proactive disclosure and a regime of narrow and limited exceptions. The right to information legislation should also provide for the creation of independent oversight bodies and for proper enforcement systems, including capacity building, awareness raising, and training for public officials.
- **The obligation to adopt a comprehensive framework and mechanisms for implementation of right to information laws:** Based on this framework, states should ensure the public has access to reliable and accurate information about all matters relevant to health emergency on the basis of proactive disclosure, including, at a minimum, the number of cases, geographical distribution, statistics on mortality and recovery, government policies, and response efforts. During the pandemic specifically, requests for information related to the pandemic should be processed rapidly and fairly. In case of refusals, requesters should be able to apply for an independent review as well as for complaints mechanisms to the oversight body and should be offered the

necessary assistance by the public body concerned if necessary. Moreover, right to information law should establish dedicated oversight bodies, such as information commissions, charged with oversight of implementation of these laws. During pandemics, these bodies should continue their functions in order to hold public institutions accountable for implementing right to information laws, and receive and examine - expeditiously as possible - complaints about refusals to release information by public bodies. Oversight bodies should also review in their periodic or annual reports how public bodies proactively published health information during the pandemic response and should include information about delays in responding to requests.

- **No possibility to derogate or suspend obligations under right to information laws during the pandemic:** There should be no possibility to derogate from obligations under the right to information laws during the pandemics. Equally, any suspension of the right of individuals to file access to information requests during the pandemic should be explicitly prohibited.

3. The Draft Text fails to include transparency obligations for the private sector and the WHO

ARTICLE 19 observes that several provisions in the Draft Text include transparency obligations. Namely, Article 9 refers to transparency of public funding for research and development of pandemic-related products; Article 13 calls for transparent global supply chain and logistics functions “in order to ensure availability, affordability and equitable access to pandemic related products.”

While we welcome the recognition of importance of transparency, the relevant provisions are extremely limited. They exclude two key actors in the pandemic response other than states: the private sector and the WHO itself. We believe that the inclusion of these two actors in transparency obligations is essential, given their role in preparing for and responding to possible future pandemics across the entire cycle of detection, alarm and response.

Therefore, ARTICLE 19 recommends that the Convention should explicitly include at least the following transparency obligations related to **state’s relationship with the private sector during the pandemic:**

- First, public bodies should be obliged to proactively publish in full and make accessible upon individual requests any information related to contracts and their implementation and payments and reports related to procurement from private entities related to the pandemic, in particular medical goods, equipment, drugs, and vaccines.
- Second, state transparency obligations should extend to private entities if goods, services and works related to the pandemic response are procured from them. All private entities that receive public funds should be subjected to the right to information laws. Private companies should grant individuals access to information related to the use of public funds received through requests.

Importantly, the Draft Text omits any transparency obligations for the WHO, a key actor in pandemic response. We note the WHO approach to transparency and access to information has been historically quite problematic. While the WHO has an Access to Information Policy (known as [Information Disclosure Policy](#)) that allows the public to access information about its activities, this policy presents several shortcomings. For instance, it allows the WHO to withhold “sensitive information” on the basis of “public health concerns” and does not follow international freedom of information standards.

Therefore, ARTICLE 19 recommends that the Convention should explicitly include **transparency obligations for the WHO**. These obligations should include, in particular, the principle of maximum disclosure regarding all information related to pandemic prevention, planning, and response held by the WHO in a timely manner as well as the obligation to provide information on request.

4. The concept of ‘infodemic’ is problematic and should be removed

The WHO identifies disinformation as a crucial issue that negatively impacts pandemic responses. Hence, the Draft Text refers to “infodemic” and includes specific provisions on “infodemic management” as well as provisions for tackling “false, misleading, misinformation or disinformation.”

The term “infodemic” is defined in Article 1 c) of the Draft Text as “too much information, false or misleading information, in digital and physical environments during a disease outbreak. It causes confusion and risk-taking behaviours that can harm health. It also leads to mistrust in health authorities and undermines public health and social measures.”

As for the measures to tackle “infodemics” as well as “combat false, misleading, misinformation or disinformation”, parties to the Convention should

- Promote “knowledge translation and evidence-based communication tools, strategies and partnerships relating to pandemic prevention, preparedness and response, including infodemic management, at local, national, regional and international levels” (Article 9 d) of the Draft Text) and
- “Strengthen science, public health and pandemic literacy in the population, as well as access to information on pandemics and their effects and drivers, and combat false, misleading, misinformation or disinformation, including through effective international collaboration and cooperation” (Article 18(1)).

ARTICLE 19 appreciates that the Draft Text does not specify restricting ‘disinformation’ and proposes positive measures to tackle disinformation. At the same time, we suggest to refrain from using the term ‘infodemic’ as it implies that abundance of information is similar to pandemic. We also highlight that the complex phenomena of disinformation and similar terms have been misused by many states to restrict and undermine protection of freedom of expression and freedom of the media.

We therefore recommend to refrain from using the term ‘infodemic’ in the treaty and remove it both from Article 1 (definitions) and from the subsequent provisions of the treaty.

We also recommend that the Draft Text further elaborate on positive measures that States should adopt to address disinformation. This can be done by expanding provisions in Articles 9(1) and Article 18 of the Draft Text. In particular, the obligations of state parties to address disinformation could include:

- **Obligations to promote a free, independent and diverse communication environment:** in particular through clear regulatory frameworks that ensure self-governance and independence for the media and broadcasting sector. States may also consider supporting independent public service media with a clear mandate to serve the public interest.
- **Obligations to promote media and digital literacy:** although currently, Article 18 of the Draft Text recommends strengthening “pandemic literacy,” it does not provide any specifications of such measures. We recommend expanding the recommendation to strengthening media literacy in general, including by dedicated school curricula and by engaging with civil society and media.

ARTICLE 19 stands ready to offer any additional assistance and expertise that would be helpful to the INB and governments as they consider the Draft Text and continue negotiating this Convention.