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# Independent Review and Investigation Mechanisms to Prevent Future Pandemics

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## A Proposed Way Forward

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April 2021

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This report is based on research funded by the Bill & Melinda Gates Foundation. The findings and conclusions contained within are those of the authors and do not necessarily reflect positions or policies of the Bill & Melinda Gates Foundation.

# Acronyms

CAT	Committee against Torture
CCPR	Human Rights Committee International Covenant on Civil and Political Rights
CED	Committee on Enforced Disappearances
CEDAW	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CMW	Committee on Migrant Workers
COP	Conference of the Parties
CPT	European Committee for the Prevention of Torture
CRC	Committee on the Rights of the Child
CRPD	Committee on the Rights of Persons with Disabilities
CSO	Civil society organization
ECOSOC	United Nations Economic and Social Council
FAO	Food and Agriculture Organization
FATF	Financial Action Task Force on money laundering
FCTC	WHO Framework Convention on Tobacco Control
GCC	Global Certification Commissions
GPEI	Global Polio Eradication Initiative
HRC	United Nations Human Rights Council
IAEA	International Atomic Energy Agency
IAR	Intra-Action Reviews
ICC	International Criminal Court
IEC	International Expert Committee
IHR	International Health Regulations
ILO	International Labour Organization
IMB	Independent Monitoring Board
IMF	International Monetary Fund
Interpol	International Criminal Police Organization
JEE	Joint external evaluation
MCS	Fisheries Monitoring, control and surveillance
NCB	National Central Bureau
NCC	National Certification Committee
NPT	Treaty on the Non-Proliferation of Nuclear Weapons
NVC	National Verification Committees
OCHA	Office for the Coordination of Humanitarian Affairs
OECD	Organization for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
OMB	Oversight monitoring body
OPCAT	Optional Protocol to the Convention Against Torture
OPCW	Organization for the Prohibition of Chemical Weapons
PHEIC	Public health emergency of international concern
PIP	Pandemic Influenza Preparedness Framework
RCC	Regional Certification Commissions
RVC	Regional Verification Commissions
SARS-CoV-2	Severe Acute Respiratory Syndrome Coronavirus 2
SIR	Safeguards Implementation Report
SPAR	States Parties Annual Report
SPT	Subcommittee on Prevention of Torture
UN	United Nations
UNFCCC	UN Framework Convention on Climate Change
UNGA	UN General Assembly
UPR	Universal Periodic Reviews
WHA	World Health Assembly
WHO	World Health Organization
WTO	World Trade Organization

ISBN: 978-92-808-8110-3

DOI: <https://doi.org/10.37941/RR/2021/1>

Lehtimäki, S., Reidy, A., Nishtar, K., Darehshori, S., Painter, A., & Schwalbe, N. (2021 April) Independent Review and Investigation Mechanisms to Prevent Future Pandemics: A Proposed Way Forward, Kuala Lumpur: United Nations University International Institute for Global Health.

## Executive Summary

The COVID-19 pandemic has created enormous challenges for national economies, livelihoods, and public services, including health systems. In January 2021, the World Health Organization proposed an international treaty on pandemics to strengthen the political commitment towards global pandemic preparedness, control, and response. The plan is to present a draft treaty to the World Health Assembly in May 2021.

To inform the design of a support system for this treaty, we explored existing mechanisms for periodic reviews conducted either by peers or an external group as well as mechanisms for in-country investigations, conducted with or without country consent. Based on our review, we summarized key design principles requisite for review and investigation mechanisms and explain how these could be applied to pandemics preparedness, control, and response in global health.

While there is no single global mechanism that could serve as a model in its own right, there is potential to combine aspects of existing mechanisms. A Universal Periodic Review design based on the model of human rights treaties with independent experts as the authorized monitoring body, if made obligatory, could support compliance with a new pandemic treaty. In terms of on-site investigations, the model by the Committee on Prevention of Torture could lend itself to treaty monitoring and outbreak investigations on short notice or unannounced. These mechanisms need to be put in place in accordance with several core interlinked design principles: compliance; accountability; independence; transparency and data sharing; speed; emphasis on capabilities; and incentives.

The World Health Organization can incentivize and complement these efforts. It has an essential role in providing countries with technical support and tools to strengthen emergency preparedness and response capacities, including technical support for creating surveillance structures, integrating non-traditional data sources, creating data governance and data sharing standards, and conducting regular monitoring and assessment of preparedness and response capacities.

## 1. Background

The SARS-CoV-2 virus was first detected in the city of Wuhan in late 2019, from where it rapidly spread throughout China and to other countries. On 30 January 2020, the World Health Organization (WHO) declared COVID-19 a public health emergency of international concern under the International Health Regulations (IHR). To help countries tackle the outbreak, WHO also launched the Strategic Preparedness and Response Plan<sup>1</sup> and an associated monitoring and evaluation framework with key performance indicators for COVID-19 preparedness, response and situations in countries.<sup>2</sup> To date, countries have developed national preparedness and response plans, with WHO and other United Nations (UN) and international organizations supporting implementation for those with weak health systems and significant gaps in preparedness.<sup>3</sup>

The COVID-19 pandemic has created enormous challenges for national economies, livelihoods, and public services, including health systems. In the Executive Board meeting in January 2021, WHO proposed a pandemic treaty as initially proposed by the President of the European Council, Charles Michel. The treaty, considered to reinforce the commitments on the IHR, would be negotiated under the auspices of WHO as the tobacco convention in 2003.<sup>5</sup> The plan is to present a draft treaty at the World Health Assembly (WHA) in May 2021.<sup>1</sup>

As suggested by the Africa Group, WHO is also developing a Universal Health and Preparedness Review, which is a voluntary, member state-led mechanism aimed to strengthen international cooperation, foster exchange of best practices, identify new and emerging issues, promote accountability, and ensure efficient targeting and use of investments. The WHO Secretariat will support the Review; however, its modalities are not yet confirmed. Germany and France will initially pilot it.

Additionally, the international community is discussing whether there is a need for a more permanent mechanism to independently investigate disease outbreaks and the public health response in countries to enable timely and effective preparedness and response planning and implementation.

To inform these discussions, in this paper, we explore existing institutional mechanisms with a mandate to review compliance with the rules and regulations set out in key international agreements (treaties, conventions, statutes, regulations) in their signatory countries (Section 2) and conduct independent country investigations in a manner that manages sovereign considerations (Section 3). For the entities identified, we looked at relevant powers and legal enablers, and where possible, governance and funding. Annex 1 is a summary of the entities reviewed. Based on our review, we summarize key design principles requisite for review and investigation mechanisms and consider their application to pandemic preparedness, control, and response.

## 2. Review Mechanisms

Most international agreements, including treaties, conventions, statutes, and regulations have a mechanism to track state performance and compliance through periodic reviews. These periodic reviews are facilitated and organized in a range of ways depending on the agreement. In this section, we explore periodic reviews conducted by a number of UN and multilateral organizations and group them by the type of reviewer to peer and external reviews.

A periodic **review panel** can consist of all member states, a sub-group of member states, or an external group of experts, either elected following a competitive application process or selected from an expert roster. Based on the periodic review findings, in most cases, the member state receives feedback and recommendations that it is expected to officially respond to and

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<sup>1</sup> The WHA has also commissioned an independent evaluation to assess the international response to the COVID-19 pandemic to date, including with regard to the functioning of WHO and the IHR.<sup>6</sup> The final report will be delivered to the WHA in May 2021. In addition to the Independent Panel conducting the evaluation, the IHR Review Committee on the COVID-19 response has been established to review the functioning of the IHR in particular.

implement. However, there is no sanction on incentive mechanism directly linked to the periodic review process as such.

In most cases, the initial country **report is developed by the member state** under review. However, in some cases, it is externally developed by peer countries or the relevant Secretariat. To complement and verify the country report, some review processes include **consultations with a range of stakeholders** and allow for “shadow reports” provided by non-state entities, including civil society organizations (CSOs) and UN agencies.

The reporting period varies by the agreement from annual up to seven years. In some agreements, reporting differs by country (for example, the more activities, the more frequent reporting) or by breadth (for example, exhaustive reports that are required less frequently).

Table 1. Summary of Review Mechanisms

Entity	Agreement	Reviewer	Report by	Other reports and inputs from	Frequency
<b>Peer Review</b>					
Human Rights Council (HRC)	UN General Assembly (UNGA) Resolution A/RES/60/251; UN Charter, Universal Declaration of Human Rights	Group of peers	State	CSOs, UN agencies, independent human rights experts	4,5 years
Financial Action Task Force (FATF)	Recommendations on money laundering and terrorism financing	Peers	Expert team (peer countries)	Government and CSOs	5 years
World Trade Organization (WTO)	WTO Agreement	Peers	State and WTO Secretariat	-	3-7 years
WHO Framework Convention on Tobacco Control (FCTC)	WHO FCTC	Peers (Conference of the Parties)	State	-	2 years
<b>External Review</b>					
Human Rights (HR) treaty bodies	HR treaties	Independent expert team	State	CSOs, UN agencies, independent HR experts	2-5 years
International Monetary Fund (IMF)	Agreement of the IMF	IMF Executive Board	IMF staff	Government, central bank, trade unions, and other stakeholders	1 year
United Nations Framework Convention on Climate Change (UNFCCC)	UNFCCC	Independent expert team	State	-	1-4 years
International Labour Organization (ILO)	ILO Conventions of social and labour issues	Independent expert team and a tripartite body	State	Employer and worker unions	1 year



## 2.1 Peer Reviews

The following entities conduct periodic reviews utilizing various peer-review process:

- **Human Rights Council (HRC)** coordinates the Universal Periodic Review (UPR) which is a state-led process to monitor legal obligations and norms set in the Universal Declaration of Human Rights of all 193 UN Member States.<sup>7</sup> The UPR Working Group, consisting of the 47 members of the HCR, facilitates the reviews. It is supported by "troikas" consisting of three Member States who act as rapporteurs. The UPR is conducted every 4.5 years for each Member State. It is based on a national report by a government, reports by independent human rights experts, such as Special Rapporteurs, and information from other UN agencies, human rights organizations, and CSOs.<sup>ii</sup> The findings and recommendations are discussed in a rigorous 3.5-hour Working Group session, followed by a Plenary when the final report is adopted by the Member State. The progress towards implementing the recommendations is then reviewed in a follow-up session. Where a Member State is not cooperating with the UPR, for example, by refusing to participate in review sessions, the HRC will decide on the measures to be taken.<sup>9</sup> The UPR has contributed to better coordination and improved partnership-based relationship between the government and civil society in many countries. However, it lacks a formal country-level follow-up mechanism, such as obligatory action planning or multi-sectoral coordinating mechanism.<sup>11</sup>
- **The Financial Action Task Force on money laundering (FATF)**, housed at the Organization for Economic Co-operation and Development (OECD), conducts periodic Mutual Evaluations of countries to monitor compliance with the international standards for money laundering and terrorist financing.<sup>12</sup> These peer reviews are conducted every five years by a group of 5-6 experts from Member States, supported by the FAFT Secretariat. The process is lengthy, taking up to 14 months to complete. It consists of an on-site visit to solicit input from the government and CSOs, followed by a Plenary to discuss the country findings and adopt a Mutual Evaluation Report. After the review, the country reports back to the FATF regularly on the progress made, and the FATF conducts a follow-up review after five years.<sup>13</sup>
- **The World Trade Organization (WTO)** facilitates Trade Policy Reviews that are peer assessments of countries' compliance with the trade agreements. The reviews take place under the Trade Policy Review Body that consists of all WTO Member States. The process includes a policy statement from the country under review, a report prepared by the WTO Secretariat as well as advance written questions by peer WTO Member States, a peer review meeting in Geneva, and a final report which consists of the minutes of the Geneva meeting, the country's self-report, the Secretariat report and the comments of

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<sup>ii</sup> A national report by the State under review (approx. 20 pages) including information on normative and institutional frameworks; implementation of obligations; achievements, best practices, challenges, and commitments; and follow-up to previous recommendations; a UN report (approx. 10 pages) consolidated by OHCHR summarizing the reports from treaty bodies, special procedures, and other relevant UN documents; and a summary of other relevant stakeholders' information (approx. 10 pages), such as NGOs, National Human Rights Institutions, academic or research institutions, regional organizations and civil society representatives.<sup>8</sup>



the chairperson. The review period ranges from every three to five to seven years, depending on the country's share of world trade.<sup>14</sup> There has been some criticism towards the reviews being too optimistic, as both the Secretariat and peer countries are under pressure to positively rate the countries.<sup>15</sup>

- **The WHO Framework Convention on Tobacco Control (FCTC)** requires each of the 168 State Parties to submit periodic reports to the Conference of the Parties (COP) via the Convention Secretariat.<sup>16</sup> In addition to monitoring the implementation of the FCTC, the purpose of the peer review is to learn from each other's experiences. The reporting cycle is every two years and the reports are compiled in a global report by the Secretariat.

## 2.2 External Reviews

The following entities conduct external reviews, either by a group of independent experts or staff of an authorized organization:

- **Human rights treaty bodies** monitor the implementation of the UN's nine core human rights treaties and their optional protocols. The reviews are conducted by independent experts that are elected by States Parties for four years. The review protocol is similar to the UPR described above, with the cycle varying from two to five years and the size of monitoring committees ranging from 10 to 23 members. In addition to the periodic report by a State Party, information is also solicited from civil society, national human rights institutions, UN agencies and other relevant organizations. The monitoring committee examines each report and following a "constructive dialogue", makes concluding observations and recommendations for the State Party.<sup>17</sup> These periodic reviews contribute to the UPR process.
- **The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)** creates a mechanism for conciliation between two parties who disagree on whether a State Party is giving effect to the terms of the Convention. Pursuant to Article 12 of the Convention, the Chairman of the Committee overseeing compliance with ICERD may appoint an ad hoc Conciliation Commission comprised of five Commissioners that have been unanimously agreed upon by both parties to the dispute. If the parties fail to agree on Commissioners within three months, the Committee selects the Commissioners through a secret ballot. The Commissioners prepare a report with findings of facts and recommendations that are provided to each of the States Parties to the dispute and the Commission. The States Parties are required to inform the Chairman of whether they accept the recommendations within three months.<sup>iii</sup> Though ad hoc Conciliation Commissions have rarely been used, the model of a mutually agreed-upon selection of expert Commissioners may be an avenue to obtain cooperation from reluctant stakeholders.

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<sup>iii</sup> For the process for an unresolved dispute, see International Convention on the Elimination of All Forms of Racial Discrimination, articles 11-13, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>.

- **The International Monetary Fund (IMF)** conducts periodic reviews of all of its member countries to identify risks to domestic and global economic and financial stability. The reviews, called Article IV consultations usually take place annually. IMF staff conduct a country visit to discuss the implementation of monetary and fiscal policies and reforms with the government, the central bank, and other stakeholders such as labor unions or civil society. The findings are presented to the Executive Board for discussion. A summary of the Executive Board’s decisions and recommendations is then transmitted to the member country under review. Member countries are obliged to provide the IMF with all necessary information; however, there are no legal consequences for non-compliance. Further, member countries are not legally obliged to follow the recommendations.<sup>18</sup>
- **The Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC)** reviews the climate change data provided by the 197 convention signatories. The monitoring mechanism requires the countries to establish an inventory system and report on the emission data to the Secretariat on an annual basis, and broader reports every two and four years. To enhance the objectivity of the review, the country reports are evaluated by an international group of experts, selected on an ad hoc basis from the UNFCCC roster. If the reporting is found to be deficient, sanctions may be imposed.<sup>19</sup> However, the “bottom-up” country reporting system is criticized for being inconsistent and without a transparent methodology.<sup>20</sup>
- **The International Labour Organization (ILO)** solicits reports from all 187 ILO Member States on the application of international labor standards. The review is twofold. First, the Committee of Experts on the Application of Conventions and Recommendations (CEACR), consisting of independent legal experts (not ILO staff), reviews reports annually and issues comments or, in more serious cases observations, as well as direct requests for further information.<sup>21,22</sup> Secondly, the Committee on the Application of Standards, a tripartite body under the International Labour Conference, made up of government, employer, and worker delegates also assesses country reviews. It draws on the comments by CEACR for its discussion, assesses the country’s compliance with the reporting obligations, and in case of repeated failures, names the country (“naming and shaming”).<sup>22</sup>

## 3. Country Investigations

Many agreements give powers to an assigned entity to conduct on-site visits. The purpose of these visits is to support member state compliance with the agreement as well as to investigate issues or concerns. The terms of these visits are usually outlined in the agreement or its additional protocols that the member states accept by signing. While most of the on-site visits are planned together with a signatory state in advance, agreements on the use of nuclear energy, chemical weapons, and prevention of torture form an exception, with the respective organizations having powers to access the signatory state without a particular consent for the visit. In this section, we explore these two types of investigations: on-site visits with and without country consent.

### 3.1 On-site visits with country consent

The following entities conduct on-site visits that require country consent:

- **HRC Special Procedures** are a mechanism to examine and monitor human rights situations in specific countries (“country mandates”) or on major human rights issues (thematic mandates). Within this procedure, independent human rights experts (“Special Rapporteur” or “Independent Expert”) or working groups (with five members, one from each region), serving in their personal capacities, can investigate violations through on-site visits, act on individual cases and concerns, and issue reports with recommendations. At the end of the visit, Special Procedures' mandate-holders discuss the findings and recommendations with the state and report back to the HRC.<sup>23</sup>
- **UN Fact-finding missions** and **Commissions of Inquiry** are the UN's mechanisms to gather objective information, monitor conflicts and signal concerns over peace, security, and human rights in countries. The Security Council, the UN General Assembly (UNGA), the Secretary-General and the HRC can undertake these missions. The missions usually require Member State consent.<sup>24</sup> However, there are cases where this has been bypassed, for example, by visiting the border of a neighbouring Member State.<sup>25</sup>
- **The International Criminal Court (ICC)**, is a permanent international court with jurisdiction to prosecute international crimes against humanity, genocide, and war crimes. The ICC's Office of the Prosecutor investigates cases, including on-site, or interviews witnesses either in-country or abroad. However, the host country must be either a State Party to the Rome Statute, such that it has accepted ICC jurisdiction or has otherwise agreed to an investigatory visit. The ICC has field offices where it conducts investigations, currently in six locations.<sup>27</sup> A State Party may withdraw from the ICC, but only after providing two years notice. This prevents State Parties from blocking unwanted investigations of human rights abuses that may have been committed after agreeing to ICC jurisdiction.

### 3.2 On-site visits without country consent

The following entities that report to the UNGA and the Security Council can conduct on-site visits in signatory countries without the country's consent for the particular visit:

- **The International Atomic Energy Agency (IAEA)** is authorized to verify Member State compliance with the Nuclear Non-Proliferation Treaty (NPT) that is negotiated for each of the 172 member countries separately. While routine on-site visits are planned based on a Member State's nuclear-related activities (for example, number, type, and life cycle of facilities), the IAEA can also undertake visits unannounced or on a short (2-24 hour) notice. The visits, conducted by its independent inspectors, include inspections of nuclear facilities and the collection of environmental samples.<sup>28</sup> Under the Additional Protocol to the safeguards agreements, the IAEA has a complementary inspection authority to assure both declared and undeclared activities and use, for example, the use of satellite systems to monitor the sites.<sup>29</sup> The IAEA report is provided for the Member State that can then publish the report.
- **The Organization for the Prohibition of Chemical Weapons (OPCW)** has the power to send inspectors to any of the 193 State Parties to the Chemical Weapons Convention to investigate evidence of chemicals weapons in facilities or areas. The OPCW conducts routine on-site visits and, by following a rigid protocol, may undertake unconsented “challenge inspections” to any State Party at another's request.<sup>30</sup> While the State Party under inspection has no right of refusal, it may ask for sections of the final report to be confidential. The OPCW Executive Council decides on a challenge inspection. However, in practice, such a visit has never been done. During the on-site visits and in the presence of State Party representatives, the OPCW team has the right to review any documentation, observe activities, take samples, and interview any personnel relevant to the inspection of a facility. Upon completion of an inspection, the State Party representatives and personnel are given formal feedback followed by a report. The State Party has a right of reply to the report. The OPCW has an additional mechanism to request clarification for concerns that do not require an on-site inspection.<sup>31</sup> The OPCW Executive Council is the governing body and consists of 41 elected States Parties. However, there are no provisions in the Convention that explicitly authorize any particular body to decide between compliance and non-compliance.<sup>31</sup>
- **Subcommittee on Prevention of Torture (SPT)**, is a human rights treaty body consisting of 25 independent experts. It differs from other human rights treaty bodies in that it has a preventive mandate. SPT's key instrument is to visit places of detention within a State Party that are conducted by at least two members who are accompanied by other experts if needed. By becoming a party to the Optional Protocol to the Convention Against Torture (OPCAT), States Parties agree to give the SPT access when requested, including for unannounced visits. During the visit, the SPT has unrestricted access to examine sites where persons may be deprived of their liberty, such as prisons, care institutions, or police stations, and to undertake confidential interviews. The State Party can object to a visit to a particular place of detention only on urgent and compelling grounds of national defence, public safety, natural disaster, or serious disorder at the site, that temporarily prevents the carrying out of such a visit. The SPT provides the State Party with a report and recommendations following the visit that can be confidential. However, where the State Party does not comply with the recommendations, the SPT can make the report public.<sup>26</sup>

## 4. Key Design Principles for a Review and an Investigation Mechanism

We have identified<sup>iv</sup> critical **interlinked design principles** required for a review and investigation mechanism for pandemics. These include:

- **Compliance** – the mechanisms need to encourage state compliance with the agreement. To this end, peer pressure and data verification from complementary sources, such as civil society, national human rights institutions and the private sector can assist and should be explicitly and automatically permitted.
- **Accountability** – the mechanisms need to effectively trigger a high-level political response in cases of concern, including within the WHO at the Director-General level. Triggering a high-level political response at a state level would likely require direct links to a Ministry higher than the Ministry of Health.
- **Independence** – the mechanisms should be politically and financially independent to reduce barriers to raising sensitive issues. Selection processes for reviewers or investigators must be based on their technical skills and expertise instead of based on who supported their nomination.
- **Transparency and data sharing** – the mechanisms need to ensure prompt access to information during investigations and ensure transparency and effective data sharing when reviewing countries' preparedness capacity and response after a crisis.
- **Speed** – while not applicable for a review mechanism that takes place periodically, an investigation mechanism needs to be activated promptly after detection of a public health emergency to effectively track the origin of the outbreak. The mechanisms should avoid any procedure where consensus or unanimity is required to activate an investigation. It also should provide a means for states' concerns to be addressed, including for determining the modalities of how the investigation is to take place.
- **Emphasis on capabilities** – Rather than focusing on eight static core capacities,<sup>v</sup> the broader assessment of capabilities, including political factors and leadership, needs to be embedded in the mechanisms to better understand states' level of preparedness, control, and response. To this end, the mechanisms should be led by experts with technical skills to properly assess preparedness, control and response and advise on remedial action where it is lacking.
- **Incentive** – the mechanism should be linked to incentives to motivate states to conduct reviews and grant access to on-site investigations (for example, access to vaccines, technical or financial support for health system strengthening).

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<sup>iv</sup> Based on the review and interviews conducted in January 2021.

<sup>v</sup> The IHR includes the following eight areas: National legislation, policy and financing; Coordination and National Focal Point communications; Surveillance; Response; Preparedness; Risk communication; Human Resources; and Laboratory.

## 5. Conclusions

Complementing each other, both review and investigation mechanisms should be put in place within the parameters described above. This section provides a synthesis of both mechanisms. Further information is contained in Annex 1.

### 5.1. Periodic Reviews

The purpose of the periodic review is to assess member states' implementation of **the obligations contained in an international agreement**. The country report provides an overview of implemented policies, programs and laws. It is a lengthy and demanding process and its preparation requires resources and thus, can be done only a few years apart. Nevertheless, if **made obligatory** for all signatory states, the periodic review can become an instrument to monitor state compliance with the new pandemic treaty.

The periodic review is not suitable for the prompt assessment required for outbreak investigations. However, it provides an opportunity to regularly review countries' preparedness plans, while also serving as a mechanism to assess the response in the long term. The treaty reporting process could be streamlined: signatory states could be required to provide a **comprehensive initial report** that includes **the political, economic and cultural context** and an **assessment of the country's pandemic preparedness**. Subsequent reports would focus on particular issues as requested by the monitoring committee.

The UPR could be adopted as the model for the reporting process and include **complimentary or "shadow" reports from non-state sources**, such as civil society, UN agencies and other multilaterals, and national human rights institutions, to promote transparency and data verification.

A monitoring committee comprised of **independent experts** is an alternative to the UPR peer-review process. A committee of independent experts may promote the independence and transparency of the reviews. The independent experts could be either elected for a certain period of time (human rights treaty bodies) or selected from a roster of experts (UNFCCC).

The treaty should provide for the situation of non-compliance with the periodic reporting process, including the failure to participate in the review process, to share all relevant information or to implement committee recommendations. The consequences of non-compliance could include investigation visits (IAEA or SCT) or "naming and shaming" practices (ILO) as well as legal consequences.

Whereas human rights treaty bodies are often seeking to identify violations by a state under their supervision, the mechanisms for the pandemic treaty could be seen as helping states be better prepared by identifying shortcomings. Actively identifying the types of support a signatory country required (financial, technical, commodities) to be better prepared could be welcomed, particularly where a country's lack of resources or expertise caused the shortcomings. **The approach may contribute to better collaboration and transparency.**

Regular monitoring between the reviews, **linked to WHO's technical advice and capacity building mechanisms, is also required.**



## 5.2. On-site Investigations

The purpose of the on-site investigations is to verify that states comply with the commitments outlined in the international agreement. They serve as an early warning and check-up mechanism if some concerns related to non-compliance or risks for public health emergencies arise. On-site investigations would help identify the origin of disease outbreaks and early circulation of pathogens and review whether the measures undertaken by the relevant state have been adequate.

Currently, outbreak investigations require country consent for each requested visit and they rely heavily on the data and information provided by the state. The time required to obtain consent can significantly delay investigations. On-site visits that can take place announced or on short notice as with investigations related to nuclear and chemical weapons or the prevention of torture, could help address this issue. To this end, a clear description of “sites” is required. For example, weapons treaties allow visits to declared facilities (production facilities), while the definition of “sites” under the optional protocol of prevention of torture is broader.<sup>vi</sup>

Further, the “triggers” for these strictly regulated visits need to be well defined. First, **the authority** that can trigger an investigation can be either **the inspecting entity itself or peer states**. For example, the investigating entity may determine that an investigation is necessary based on the information it has obtained independently or from a reliable third party (for example, a State, UN agency or other). Secondly, the decision to conduct on-site visits needs to be based on **reliable evidence**, and **complementary sources deploying digital technologies**, such as real-time investigation of patterns of behaviours (for example, social media site tracking) could be deployed. While rarely, if ever used in practice, the on-site investigations without a specific country consent could have a preventive effect and incentivize early alert of outbreaks.

On-site investigations should be stipulated as part of the pandemic treaty, with a **clear protocol for the process and assigned authority** to conduct the visits. For example, decisions to take this action could be subject to a supermajority (60% or 2/3) to justify invoking an extraordinary power. While this could embed credibility in the decision taken to visit without consent, it does not tie the mechanism to any process that would allow a minority a veto, or otherwise hamper the decision-making process. While WHO conducts routine missions to assess country preparedness and response measures, the visits without state-specific consent could be conducted by **an independent expert group** to help mitigate political and financial pressure inherent to WHO.

The investigations mechanism should **define whether it is applied to all public health emergencies** (“events” as per the IHR) or only to disease outbreaks; whether it is **universal or only for those without investigation capacity** (resource-poor countries); whether it will be **limited to pathogens with pandemic potential or also to those potentially deliberately**

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<sup>vi</sup> Under the Optional Protocol to the CAT, State Parties agree to “allow visits, under the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention).”



**released** that pose a security issue. The competence of the investigation entity should be then designed accordingly.

Finally, the **consequences of not allowing investigations**, including issues with transparency and data sharing should be defined. If possible, oversight by the UN would give unique legal powers, political leverage, and pressure in cases of non-compliance that could raise the status of public health and strengthen political commitment and investment in epidemics preparedness and control.

## 6. The Way Forward

The political, economic, and societal challenges resulting from the COVID-19 pandemic and its control provide an opportunity to create an ambitious and progressive mechanism, with the mandate and requisite powers fit for purpose.

There is no single global mechanism that could serve as a model for reviewing and investigating pandemics preparedness, control, and response. However, **there is potential to combine aspects of what already exists to develop a robust treaty to prevent or rapidly control future pandemics.**

The mechanisms for periodic reviews and on-site investigations will need to **incorporate core interlinked design principles**: compliance; accountability; independence transparency and data sharing; speed; emphasis on capabilities; and incentives.

The **periodic review** should be made obligatory to support compliance with the new pandemic treaty. To ensure the independence of the monitoring committee, it could be designed based on the model of human rights treaties, with the committee comprised of independent experts. In addition to state reporting, the periodic review process should solicit feedback from civil society, national human rights institutions, UN agencies and other international and multilateral organizations.

State parties to the pandemic treaty should not be able to block **on-site investigations**. Independent experts conducting short notice or unannounced visits should be entitled to enter the State party and see any relevant place or person or document. The potential triggers for a short notice or unannounced visit will need to be clearly defined.

Finally, **WHO can play a critical role to incentivize and complement these efforts.** It has an essential role in providing countries with technical support and tools to strengthen emergency preparedness and response capacities. The support and tools include technical support for creating surveillance structures, integrating non-traditional data sources, creating data governance and data sharing standards, and conducting regular monitoring and assessment of preparedness and response capacities.

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# ANNEXES

## Annex 1. A summary of entities reviewed

We reviewed existing institutional mechanisms with a mandate to conduct periodic reviews and independent in-country investigations.<sup>vii</sup> We examined the relevant powers and functions of the identified institutions and, where possible, governance and funding. The institutions were grouped into three categories: entities with United Nations (UN) treaty-mandated investigative powers; multilateral entities (UN and non-UN) with agreement-based investigative powers; and health-specific entities closely linked to the World Health Organization (WHO). The strengths and weaknesses associated with each category were identified from the literature and verified through expert consultations. The key findings are summarized below and in Table 1.

### Entities with the UN treaty-mandated review and investigative powers

An international treaty or convention is a binding formal agreement under international law that establishes legal rights and formal obligations in political, economic, cultural and other spheres and is subject to ratification by contracting states. Treaties refer to significant issues such as human rights, disarmament, and the promotion of peace.<sup>34,35</sup> We reviewed seven entities established to support and monitor state compliance with international legal obligations. The seven entities are: include the UN Human Rights Council (HRC)<sup>viii</sup>; Human Rights treaty bodies; the Secretariat of the UN Framework Convention on Climate Change (UNFCCC); International Labour Organization (ILO); the International Atomic Energy Agency (IAEA); the Organization for the Prohibition of Chemical Weapons (OPCW); and the International Criminal Court (ICC). The strengths and weaknesses of these are summarized below.

**Strengths:** Mechanisms created to ensure compliance with international legal obligations, in particular those that are treaty-based, can **leverage the existing multilateral UN structures**, with political, technical, and investigative support provided by UN agencies according to their respective mandates. The international treaties that establish the monitoring mechanisms, typically have the **majority of UN Member States as States Parties**, indicating significant political commitment from governments. Ratification of a treaty gives rise to international legal rights and obligations. The mechanisms monitor compliance with the legal obligations contained in the **treaty** to take the necessary steps to implement the rights contained in the treaty including legislative, administrative, judicial, or other measures and to report on the treaty's implementation. In some cases, the UN system allows for independent data collection and monitoring in signatory countries. For example, in cases related to the development and use of

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<sup>vii</sup> We searched grey literature online, including webpages of entities linked to the major human rights and other international treaties as well as used a combination of search terms, including "organization" OR "institution" OR "United Nations" AND "investigation" OR "country review" OR "independent review" OR "independent monitoring." We then further identified the mandate, members, member engagement and obligations, and governance of the organizations. A total of 18 entities were included in the analysis with key findings tested through the senior stakeholder interviews.

<sup>viii</sup> HRC was not established by a treaty, but created by UNGA to "strengthen[] the promotion and protection of human rights around the globe and address[] situations of human rights violations and make recommendations on them."



nuclear and chemical weapons inspections, certified independent investigators can access the signatory country unannounced or with short notice. However, more frequently the main monitoring mechanism is a **formal country review process** that includes a “**shadow**” reporting process to provide additional information from multilateral agencies, national human rights institutions, and civil society organizations (CSOs). Other investigatory mechanisms include individual complaints and on-site missions, usually requiring State Party consent. The mechanism is primarily funded by Member States, directly or through the UN, and supplemented by voluntary contributions.

**Weaknesses:** UN treaty monitoring mechanisms are **perceived as cumbersome and slow**. Treaty establishment, including the development and ratification process and establishing a monitoring committee and secretariat, requires time and resources. International regulations, such as the International Health Regulations (IHR), typically support existing entities, whereas a treaty or convention establishes a new legal entity and requires countries to “opt-in” rather than “opt-out” of the agreement. Further, treaty monitoring takes place mostly through **periodic country reviews** that may be more appropriate for assessing preparedness rather than an effective and prompt response. While site visits and on-site investigations can occur more promptly and frequently than periodic reviews, in most cases, they require country consent for each visit, which the country may or may not grant.<sup>ix</sup>

- *The United Nations Human Rights Council* (HRC), established in 2006 as a successor of the UN Commission on Human Rights, assesses the human rights situation in Member States and monitors compliance with international human rights obligations. It reports to the United Nations General Assembly (UNGA).
  - The HRC conducts **Universal Periodic Reviews** (UPR) of the human rights records of all 193 UN Member States.<sup>7</sup> The reviews are conducted by the UPR Working Group, consisting of the 47 members of the Council, and supported by “troikas”, which are rapporteurs consisting of three Member States. Reviews, conducted every 4.5 years for each UN Member State, are based on a national report by a government, reports by independent human rights experts, such as Special Rapporteurs, and information from other UN agencies, human rights organizations, and CSOs. The findings and recommendations are discussed in a rigorous 3.5-hour Working Group session, followed by a Plenary when the final report is adopted by a state. The progress towards implementing the recommendations of the HRC, in particular those that are accepted by the State, will be then reviewed in a follow-up session. In case a State is not cooperating, for example through non-participation, the HRC will decide on the measures to be taken.<sup>9</sup> The HRC has also set a procedure for receiving complaints from individuals or groups that wish to report on human rights violations.<sup>10</sup>
  - HRC “**Special procedures**” are a mechanism to examine and monitor human rights situations in specific territories (country mandates) or on major human

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<sup>ix</sup> This is not the case for OPCW and IAEA that monitors compliance with the Chemical Weapons Convention and Treaty on the Non-Proliferation of Nuclear Weapons, respectively. By committing to the treaty, signatory countries are obliged to allow unannounced onsite inspections. While autonomous, OPCW and IAEA report to the UN Security Council and UNGA.

rights issues (thematic mandates). Within this procedure, independent human rights experts ("Special Rapporteur" or "Independent Expert") or Working Groups (with five members, one from each region), serving in their personal capacities, can investigate violations through on-site visits, act on individual cases and concerns, and issue reports with recommendations. At the end of the visit, Special Procedures' mandate-holders discuss the findings and recommendations with the State and report back to the HRC.<sup>23</sup>

- The HRC, with support from the Office of the High Commissioner for Human Rights (OHCHR), can establish **international commissions of inquiries, fact-finding missions, and investigations** to respond to serious violations of international human rights and humanitarian law. Fact-finding missions are also undertaken by the Security Council, the United Nations General Assembly (UNGA) and the UN Secretary-General to gather objective information, monitor conflicts and signal concerns over peace and security in countries. Missions are undertaken with the consent of a country.<sup>36</sup>
- *Human rights treaty bodies* are committees<sup>x</sup> established to monitor the implementation of the UN's nine international human rights treaties and one optional protocol. They consist of independent experts that are elected by states for a renewable 4-year period. While the reporting protocol is similar to the UPR process, the cycle varies by treaty from two to five years.<sup>37</sup> The committees also have the authority to conduct on-site investigations and some can review individual complaints. For example:
  - The Committee on the Rights of the Child (CRC), a body of 18 Independent experts, that monitors the implementation of the Convention on the Rights of the Child and its optional protocols, reviews regular reports from countries every five years. In addition to an obligatory report by a State, CRC solicits input from CSOs and UN agencies, as well as considering individual complaints for those States that have ratified the Optional Protocol establishing a complaint procedure. CRC examines each report and makes recommendations for a state.<sup>17</sup>
  - Subcommittee on Prevention of Torture (SPT), consisting of 25 independent experts, differs from other treaty bodies in that it has a preventive mandate and it works directly with States Parties without periodic state reporting. It is modelled on the 1989 European Committee for the Prevention of Torture. The SPT's key instrument is the country visit, conducted by at least two members and accompanied by other experts if needed. During the visit, the SPT has unrestricted access to examine sites where persons may be deprived of their liberty, such as prisons, care institutions, or police stations and to undertake

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<sup>x</sup> Committee on the Elimination of Racial Discrimination (CERD); Committee on Economic, Social and Cultural Rights (CESCR); International Covenant on Civil and Political Rights (CCPR); Committee on the Elimination of Discrimination against Women (CEDAW); Committee against Torture (CAT); Committee on the Rights of the Child (CRC); Committee on Migrant Workers (CMW); Subcommittee on Prevention of Torture (SPT); Committee on the Rights of Persons with Disabilities (CRPD); Committee on Enforced Disappearances (CED)

confidential interviews. After the visit, it provides the State Party with a report and recommendations that can be confidential. In case the State Party does not comply with the recommendations, the SPT can make the report public.<sup>26</sup>

- *The Secretariat of the United Nations Framework Convention on Climate Change* (UNFCCC), based in Bonn, facilitates the UNFCCC, an international environmental treaty signed in 1992 at the Rio Earth Summit. The treaty has been expanded twice by the Kyoto Protocol and the Paris Agreement. Its 197 Parties to the Convention includes all UN Member States, UNGA observer State of Palestine, non-UN member states Niue and the Cook Islands, and the European Union. The Parties are divided into three categories with different commitments: developed countries, developed countries with special financial responsibilities, and developing countries.<sup>38</sup> The monitoring mechanism requires Parties to the Convention to establish an inventory system and report on the emission data to the Secretariat on an annual basis, with broader reports every two and four years.<sup>19</sup> However, the "bottom-up" country reporting system is criticized for being inconsistent and without a transparent methodology.<sup>20</sup> In addition to the Secretariat, intergovernmental processes related to the UNFCCC are arranged under several bodies. The Conference of the Parties (COP) is the supreme decision-making body that meets annually to assess progress in climate change. The COP is supported by the Bureau of the COP as well as permanent, ad hoc, and technical subsidiary bodies. There is also a range of civil society groups as Observers to the treaty.<sup>39</sup>
- *The International Labour Organization* (ILO), established in 1919, is a specialized UN agency that brings together 187 member states to set labor standards and develop policies and programs promoting decent work. The annual International Labour Conference is the highest decision-making body, where each member state is represented by a tripartite delegation consisting of government, employer, and worker representatives, all with equal voting rights. The Conference has adopted 189 Conventions, which are legally binding international treaties that may be ratified by member states, as well as 202 Recommendations, which are not legally binding. The ILO Committee of Experts reviews member state reports regularly and makes observations and direct requests to countries on the application of the labor conventions and recommendations.<sup>21</sup> The ILO has also a procedure for complaints through a Commission of Inquiry, consisting of three independent members, established to investigate serious violations by a member state that can then be processed by the International Court of Justice, or in some cases, by the International Labour Conference.<sup>40</sup> The ILO is headquartered in Geneva and has around 40 field offices worldwide.<sup>41</sup>
- *The International Atomic Energy Agency* (IAEA), established by the IAEA treaty in 1957 regulates and promotes the peaceful use of atomic power. It is an autonomous UN agency and reports to the UNGA and the UN Security Council. It has 172 member states that commit to "safeguard agreements" that are legally binding frameworks aligned with the Nuclear Non-Proliferation Treaty (NPT), negotiated for each country separately. Member states are obliged to report to the IAEA on the production and use of nuclear material and designing nuclear facilities. In addition to the member state reports, the

IAEA has an independent mechanism to verify compliance with safeguard agreements through routine on-site inspections conducted by independent inspectors. The routine inspections can follow a defined schedule or be unannounced or short-notice (2-24 hours in advance).<sup>28</sup> The Additional Protocol complements the safeguards agreements and strengthens the IAEA's inspection authority to verify and provide assurance regarding both declared and undeclared nuclear material and activities, for example, through the use of satellite imagery of sites.<sup>29</sup> Based on the member state reports, the IAEA develops an annual Safeguards Implementation Report (SIR) for each member state.<sup>42</sup> In case of non-compliance with nuclear agreements, the IAEA informs the 35-member Board of Governors, which further informs the UNGA and the UN Security Council.<sup>43</sup>

- *The Organization for the Prohibition of Chemical Weapons* (OPCW), founded in 1997, ensures the implementation of the Chemical Weapons Convention. While an autonomous organization, it reports to UNGA and the Security Council and collaborates closely with the UN, including through Joint Missions. It has 193 member states and has the power to send inspectors to any signatory country to search for evidence of chemical weapons. The Technical Secretariat proposes policies for the member states to implement the Convention. The Executive Council, consisting of 41 elected member states, has the executive powers to provide recommendations and take measures if a member state does not comply with the Convention.<sup>44</sup>
- *The International Criminal Court* (ICC), established by the Rome Statute of the International Criminal Court, is a permanent international court with jurisdiction to prosecute international crimes against humanity, genocide, and war crimes. Established in 2002, it has 123 member states that are its primary funders. It takes cases upon referral by its member states or by the UN Security Council, and in rare cases, may initiate an investigation on its own. The ICC's Office of the Prosecutor investigates cases, including on-site, or interviews witnesses either in-country or abroad, for example, in refugee camps, provided the State where the investigation is pursued is either a member state to the Rome Statute or has otherwise agreed to the on-site visit. The ICC's Office of the Prosecutor has field offices where it conducts investigations, currently in six locations.<sup>27</sup>

## Entities with agreement-based review and investigative powers

In addition to the entities mandated to support and monitor UN-wide treaties or conventions, intergovernmental agreements have established organizations with investigative powers. The agreements are usually applied to narrower subject matters and stipulate binding principles for economic, cultural, scientific, and technical co-operation; they are technical or administrative in character.<sup>35</sup> We reviewed six entities mandated to support and monitor international agreements. The six entities are the Financial Action Task Force on money laundering (FATF); the International Criminal Police Organization (Interpol); the International Monetary Fund (IMF); the World Trade Organization (WTO); the Food and Agriculture Organization's Fisheries Monitoring, control and surveillance (MCS); and the World Bank's Inspection Panel. It is difficult

to generalize across these organizations as their only similarity is their technical or administrative character. However, a high-level overview of the strengths and weaknesses of this type of mechanism is summarized below.

**Strengths:** Five of the entities facilitate the exchange of information between member states relating to their specific subject matter. For example, Interpol maintains a vast communication network, including a police database that helps to promptly respond to transnational crime. The WTO and the IMF have extensive surveillance systems for tracking economic and trade policies and communicate that information to their membership to inform global, regional, and country policies and decision-making, and investment. The World Bank's Investigation Panel is an internal independent mechanism to investigate the adverse effects of its own programs.

**Weaknesses:** Only the FATF and the IMF have standard country review processes. Thus, **countries are not obliged to self-monitor or report** on progress to the other four entities. Without the UN Security Council leverage, they **do not have access to countries without country permission**. Hence, they **rely on data provided by countries** without parallel investigation or verification mechanism.

- *The Financial Action Task Force on money laundering* (FATF), established in 1989, is housed at the Organization for Economic Co-operation and Development (OECD) to develop policies and monitor legislative, financial and law enforcement activities at the national and international levels. 200 jurisdictions, including 39 countries have committed to implement its international standards for money laundering and terrorist financing. FATF conducts Mutual Evaluations of countries into which it solicits inputs from the government and CSOs. The country then reports back to the FATF regularly on the progress that FATF checks through a follow-up assessment after five years.<sup>12</sup>
- *The International Criminal Police Organization* (Interpol) is an inter-governmental organization that helps national police. It has 194 member countries. The National Central Bureau (NCB) within the government ministry is responsible for policing. The General Secretariat manages police databases and provides technical support.<sup>45</sup>
- *International Monetary Fund* (IMF), established in 1945 in Bretton Woods by the United Nations Monetary and Financial Conference, is an international financial institution with 190 member countries. Its purpose is to ensure the stability of the international monetary system through economic surveillance, lending, and technical assistance. IMF's loans are conditional and paid out in instalments upon a program review in which the country demonstrates that the program conditions have been made. In addition to this, the IMF conducts economic surveillance in all of its member countries. During the so-called Article IV consultation, conducted annually, IMF staff conduct a country visit to meet with the government, central bank, and other stakeholders such as labour unions or civil society. The findings are reported to the Executive Board that then communicates back to the country with recommendations. Countries are obliged to provide the IMF with all necessary information. However, there are no legal consequences in case of non-compliance. Also, countries are not legally obliged to follow the recommendations.<sup>18</sup>



- *The World Trade Organization* (WTO), established in 1995, is an international organization that supports negotiating the rules of trade between nations. It has 164 country members, accounting for 98% of world trade. The main instrument is WTO Agreements that, based on consensus, are ratified in all members' parliaments. The Ministerial Conference that meets every two years, is the highest decision-making body. Its Secretariat with around 630 staff is based in Geneva.<sup>46</sup> All members undergo a periodic peer review of their trade policies and practices that are based on reports by the Secretariat, the country itself, as well as comments by other members.<sup>47</sup>
- *Fisheries Monitoring, control, and surveillance* (MCS) is an instrument by the UN's Food and Agriculture Organization (FAO) to support enforcement of the international fishing laws. It includes implementing a range of operations from data collection and analysis to participatory planning to establishing a regulatory framework.<sup>48</sup> There is no systematic global review or country reporting process.<sup>49</sup>
- *World Bank's Inspection Panel* is an independent complaints mechanism for people and communities who believe that they have been, or are likely to be, adversely affected by a World Bank-funded project. The Panel determines whether the Bank is complying with its own policies and procedures, which are designed to ensure that Bank-financed operations provide social and environmental benefits and avoid harm to people and the environment. The Panel does not investigate unless it receives a formal, written Request for Inspection. An investigation can only be authorized by the Board of Executive Directors. During an inspection, the Panel visits the borrowing country and meets with the requesters and other affected people, as well as with a broad array of people from whom it can learn in detail about the issues, the project's status, and potentially harmful effects. Building on this example, other multilateral and regional financial institutions have established similar independent accountability mechanisms.<sup>50</sup>

## Entities specific to health

We also reviewed four entities specific to health, all closely linked with WHO. These are the Independent Monitoring Board (IMB) of the Global Polio Eradication Initiative (GPEI), the Global and Regional Certification Commissions and National Certification Committee (GCC, RCCs, NCCs), the International Health Regulations (IHR), and the WHO Framework Convention on Tobacco Control (FCTC). These entities rely mostly on data and information provided by countries and operate **only with country permission**.

As a treaty, the WHO FCTC requires the Member States to "opt-in" and ratify it at the national level, while the IHR as WHA-approved 'Regulations' automatically come into force without explicit consent or ratification in the WHO Member States after a notice period.<sup>51</sup> Both the WHO treaties and Regulations are legally binding. However, there is no guarantee of effective compliance, accountability, or translation into national law in the WHO Member States.

In addition to binding international treaties and regulations, WHO may adopt non-binding recommendations in the form of codes, global strategies, and action plans. The WHO Secretariat may also issue other non-binding technical guidelines and standards and convene

expert committees or panels to produce advisory reports. Table 2 provides an overview of the range of WHO binding and non-binding instruments and a preliminary view of the relative strengths and weaknesses of these instruments.

- *The Independent Monitoring Board (IMB)* was established in 2010 by the Global Polio Eradication Initiative (GPEI) to monitor and guide the progress towards polio eradication in polio-affected countries as well as the polio program as a whole. Its work focuses on low-and middle-income countries. It has contributed to the prioritization of polio, for example by recommending WHA to declare polio eradication a programmatic emergency and pushing Pakistan to intensify its polio efforts. IMB consists of nine public health or communications experts and a small secretariat that is independent of GPEI. During 3-day IMB meetings, that take place every 3-6 months, high-level officials from polio-affected countries, GPEI and partners provide the IMB with formal reports on the plans and progress. The IMB evaluates progress towards key milestones, and if found to be off track, advises corrective actions. The IMB also triangulates the data, including through country visits and other experts, and within 3 weeks after the meeting, develops a synthesis report available for the public.<sup>52</sup>
- *Global and Regional Certification Commissions and National Certification Committees (GCC, RCCs, NCCs)* are independent bodies assisting GPEI in verifying polio eradication in a formal and standard manner. At the country-level, NCCs consist of clinicians, virologists, and public health experts, appointed by the national polio program, that review program performance and provide the RCC with annual reports. RCCs consist of globally acknowledged polio experts that review country reports based on which they develop risk assessment to WHO Regional Director, NCCs and GCC.<sup>53,54</sup> RCC conduct country visits and can certify regions polio-free. Once all six regions are certified, GCC, composed of chairs of each region, can certify the world free of polio. NCCs and RCCs meet annually and GCC on an ad hoc basis.<sup>53</sup> Similar 3-level structure is used for the verification of measles, rubella and congenital rubella syndrome elimination through **National Verification Committees (NVC), Regional Verification Commissions (RVCs) and the International Expert Committee (IEC)**.
- *The International Health Regulations (IHR)*, adopted in 1969 and revised in 2005 by WHA, provides a legal framework for countries' rights and obligations in preparing, reporting and responding to public health emergencies defined as "extraordinary events determined to constitute a public health risk to other States through the international spread of disease and to potentially require a coordinated international response." It binds 196 countries. WHO acts as the main global surveillance system for the IHR. Under the IHR, countries designate an IHR Focal Point that is on alert on a 24/7 basis. If countries detect a potential PHEIC within their respective territory, they are obliged to formally notify WHO, or in case of uncertainty, initiate a confidential consultation with WHO. Based on other than official sources, WHO itself can also initiate Request for Verification, to which the country is required to officially respond within 24 hours. In case of a PHEIC, the WHO Director-General is empowered to declare a "public health emergency of international concern" (PHEIC), based on the advice by the IHR Emergency Committee that is an ad hoc expert group consisting of international experts,



including one nominated by the State of concern. After PHEIC, the Emergency Committee provides recommendations for WHO and countries on actions and works closely with the affected country.<sup>55</sup> The IHR obliges countries to strengthen and maintain their preparedness, surveillance and response capacities, and report to WHA on the annual basis through the States Parties Annual Report (SPAR).<sup>56</sup> To complement self-reporting, a joint external evaluation (JEE), a voluntary, multisectoral process to assess country capacities and identify gaps within human and animal health systems, is encouraged every five years.<sup>57</sup> During emergencies, WHO also provides technical support for countries to conduct Intra-Action Reviews (IAR) that assess and help correct the ongoing national and subnational response.<sup>58</sup>

- *The WHO Framework Convention on Tobacco Control (FCTC)* is the first international treaty adopted by the WHA in 2003. It is ratified by 168 countries. The FCTC is governed by the Conference of the Parties (COP) that consists of all signatory countries. COP is supported by the 6-member Bureau of COP with elected members representing each WHO region. Each signatory reports periodically to the COP on the FCTC implementation. The FCTC has also the Convention Secretariat that promotes country policies and coordinates the work. While hosted by WHO, the Secretariat has a work plan and budget consisting of State Parties' mandatory and voluntary contributions, and it reports to the Conference of the Parties.<sup>16</sup> Within its Tobacco Free Initiative, WHO publishes annually a report on the global tobacco epidemic, including country profiles on tobacco prevalence, policies and economics.<sup>59</sup>

**Table 1. Key attributes of the entities reviewed**

Organization/ entity/initiative	Weight		Independence				Prompt response mechanism	Leverages existing country structures	Individual complaint mechanism
	UN leverage/ oversight	Legally binding agreement	Reports to	Periodic independent review based on multiple sources	On-site visits (with country consent)	On-site visits (without country consent)			
<b>UN treaty-mandated investigative powers</b>									
UN Human Rights Council	+	+	UNGA	+	+	-	+/-	n/a	+
Human rights treaty bodies	+	+	UNGA / ECOSOC	+	+	-/+ (SPT)	+/-	+	Some
UN Framework Convention on Climate Change	+	+	UN Secretariat	Based on country self-reporting	-	-	-	+	-
International Labour Organization	+	+	Autonomous, coordinated by ECOSOC	+	Where country offices	-	-	+	+
International Atomic Energy Agency	+	+	UNGA and Security Council	+	+	+	+	+	+
Organization for the Prohibition of Chemical Weapons	+	+	Autonomous, reports to UNGA and Security Council	-	+	+	+	+	-
International Criminal Court	+	+	Autonomous, related to UNGA and Security Council	-	+	-	-	+	+
<b>Agreement-based investigative powers</b>									
Financial Action Task Force on Money Laundering	-	+	Autonomous	+	-	-	-	+	-
Interpol	-	-	Autonomous	-	-	-	+	+	-

International Monetary Fund (IMF)	+	+	Autonomous, contributes to UNGA and ECOSOC	+	+	-	-	n/a	-
World Trade Organization	+	+	Autonomous, contributes to UNGA and ECOSOC	+	-	-	-	+	-
Fisheries Monitoring, control, and surveillance/FAO	+	+	Autonomous, coordinated by ECOSOC	-	Where country offices	-	-	-	-
World Bank's Inspection Panel	+	-	Autonomous, coordinated by ECOSOC	-	n/a	-	-	n/a	+
<b>Specific to health</b>									
Independent Polio Monitoring Board	-	-	GPEI	+	+	-	-	+	-
Global and Regional Certification Commissions, National Committees	+	-	WHO	+	+	-	-	+	-
International Health Regulations	+	+	WHO	-	Through WHO	-	+	+	-
Framework Convention on Tobacco Control	+	+	WHO	+	-	-	-	+	-

**Table 2. Catalogue of WHO instruments**

International Treaty				
Tool	Example	Characteristics	Strengths	Weaknesses
Convention or Agreement <sup>26</sup> (article 19)	Framework Convention on Tobacco Control (FCTC)	<ul style="list-style-type: none"> <li>Legally binding</li> <li>Requires a two-thirds vote of the Health Assembly to adopt.<sup>26</sup> (article 60a)</li> <li>Comes into force upon acceptance under Member States' national constitutional processes.</li> <li>The Member States must act on accepting within 18 months of adoption, and report on reasons for not accepting.<sup>26</sup> (article 20)</li> <li>Member States may express reservations to specific provisions.</li> <li>Requires annual reporting by the Member States to the Health Assembly, Director-General or as otherwise specified in such convention or agreement.<sup>26</sup> (article 62)</li> <li>Broad scope within WHO's mandate and areas of expertise.</li> <li>FCTC establishes norms to reduce the supply and demand for tobacco products and share information.</li> </ul>	<ul style="list-style-type: none"> <li>Broad scope.</li> <li>Potential to strengthen national laws and approaches.</li> <li>Power to create standalone treaties to further aims.</li> <li>Create obligations regarding reporting, coordination, and protection against industry interference.</li> </ul>	<ul style="list-style-type: none"> <li>Broad language can lead to variations in implementation.</li> <li>Lack of accompanying resources to enforce and implement.</li> <li>Compliance and enforcement challenges.</li> <li>Weak dispute mechanism.</li> <li>Complex to negotiate.</li> <li>Non-State actors are not parties.</li> </ul>
Regulation (article 21) <sup>26</sup>	Nomenclature with Respect to Diseases and Causes of Death  International Health Regulations (IHR)	<ul style="list-style-type: none"> <li>Legally binding</li> <li>Requires simple majority vote of the Health Assembly to adopt.<sup>26</sup> (article 60b)</li> <li>Comes into force without express consent by the Member States – Member States must express rejection or reservation within a defined period after adoption.<sup>26</sup> (article 22)</li> <li>Requires annual reporting by the Member States to the Health Assembly, Director-General or as otherwise specified in such regulations.<sup>26</sup> (article 62)</li> <li>Scope limited to sanitary and quarantine requirements; Nomenclatures concerning diseases, causes of death and public health practices; Standards concerning diagnostic procedures; Standards concerning safety, purity and potency of biological and pharmaceutical products; and Advertising and labelling of biological and pharmaceutical products.<sup>26</sup> (article 21)</li> </ul>	<ul style="list-style-type: none"> <li>Member States must opt-out rather than opt-in.</li> <li>Sets rules for the Member States to follow and adopt.</li> <li>Standardization allows comparability of data.</li> </ul>	<ul style="list-style-type: none"> <li>Scope limited to enumerated areas.</li> <li>Compliance and enforcement challenges.</li> <li>Weak monitoring, assessment and follow-up capacity.</li> <li>Untested dispute mechanism.</li> <li>Complex to negotiate.</li> <li>Non-State actors are not parties.</li> </ul>

Non-binding (Soft) Tools				
Tool	Example	Characteristics	Strengths	Weaknesses
Recommendations <sup>26</sup> (article 23)	<p>Codes (<a href="#">International Code of Marketing of Breast-Milk Substitutes</a>; <a href="#">Global Code of Practice on the International Recruitment of Health Personnel</a>)</p> <p>Global Strategies (e.g., <a href="#">Global health sector strategy on HIV, 2016 – 2021</a>; <a href="#">Global Strategy to Reduce the Harmful Use of Alcohol</a>; <a href="#">Global Strategy on Digital Health 2020 – 2024 (DRAFT 28 June 2019)</a>)</p> <p>Global Action Plans (e.g., <a href="#">WHO Vaccine Action Plan 2011 – 2020</a>)</p>	<ul style="list-style-type: none"> <li>• Not legally binding.</li> <li>• Requires simple majority vote of the Health Assembly to adopt.</li> <li>• Broad scope within WHO’s mandate and areas of expertise.</li> <li>• Codes are reserved for matters of the highest political concern (International Code of Marketing of Breast-Milk Substitutes (1981) and the Global Code of Practice on the International Recruitment of Health Personnel (2010)).<sup>27</sup></li> <li>• Global Strategies provide a strategic vision of how to address challenges with specific objectives – highlight the roles and responsibilities of WHO and its partners.</li> <li>• Global Action Plans outline specific steps or activities to achieve a strategy, including tasks, deadlines and resourcing needs.</li> <li>• Guide end-user on what can or should be done in certain situations.</li> </ul>	<ul style="list-style-type: none"> <li>• Resolutions of the Health Assembly signal will and commitment (only Recommendations).</li> <li>• Can be translated into national laws.</li> <li>• Can be more inclusive of non-State actors.</li> <li>• Can be less complex to negotiate or amend.</li> <li>• Parties may be more willing to agree to stricter norms or higher ambitions when they are non-binding.</li> </ul>	<ul style="list-style-type: none"> <li>• Countries can ignore.</li> <li>• Translation and implementation at the national or local level depend on resources and capacity.</li> <li>• Incentives to adopt at the national and local level can be misaligned.</li> <li>• Weak enforcement mechanisms.</li> <li>• Accountability through targeting setting, monitoring, reporting and timelines needed.</li> </ul>
Technical Guidance and Standards	<p>Guidelines and Standards (e.g., <a href="#">Guidelines for the Treatment of Malaria</a>; <a href="#">Guidelines for Drinking-Water Quality</a>)</p> <p>Expert Committee Reports (e.g., <a href="#">Report of the WHO Expert Committee on the Selection and Use of Essential Medicines</a>)</p>	<ul style="list-style-type: none"> <li>• Not legally binding.</li> <li>• Broad scope within WHO’s mandate and areas of expertise.</li> <li>• Guidelines or standards issued by WHO Secretariat under delegated authority.</li> <li>• Expert reports are advisory, issued by convened panels or committees.</li> <li>• Outlines policies, interventions or methods of practice that are evidence-based.</li> </ul>	<p><u>Additional to the above</u></p> <ul style="list-style-type: none"> <li>• While advisory can influence scientific development.</li> <li>• More technical, less political.</li> </ul>	<p><u>Additional to the above</u></p> <ul style="list-style-type: none"> <li>• No formal Health Assembly approval of guidelines or standards.</li> <li>• No formal Health Assembly endorsement of expert reports.</li> </ul>
Hybrid Instrument	<p><a href="#">Pandemic Influenza Preparedness (PIP) Framework</a></p>	<ul style="list-style-type: none"> <li>• Not legally binding.</li> <li>• Facilitates sharing of flu viruses among countries and equitable access to vaccines or medication.</li> <li>• Standard Material Transfer Agreements bind non-State actors not otherwise bound.</li> </ul>	<ul style="list-style-type: none"> <li>• Created binding obligations through a contract to increase data sharing and access to vaccines and medication.</li> </ul>	<ul style="list-style-type: none"> <li>• Complex to negotiate.</li> </ul>

## Annex 2. Summary of perspectives of human rights experts

We sought input from three experts with extensive experience with human rights treaty monitoring bodies, in particular the Subcommittee on Prevention of Torture (SPT), established under the Optional Protocol to the Convention Against Torture (OPCAT) and the European Committee for the Prevention of Torture (CPT). The SPT and the CPT may be useful examples for an oversight monitoring body (OMB) of a treaty focused on pandemic prevention and preparedness. The information was obtained through initial unstructured conversations. Accordingly, the experts did not necessarily provide input on identical issues. Two experts were from Western European countries, one was from Latin America. Two were male, one was female.

The three experts encouraged an ambitious and progressive design for the OMB with the mandate and requisite powers fit for purpose, necessary to achieve the treaty's goals and not limited by existing models.

One expert emphasized that this treaty's context presented an opportunity for a more robust assistance role for an OMB. Both the human rights monitoring mechanisms and the Office of the High Commission for Human Rights (OHCHR) offer some technical assistance to States under review. However, the primary focus is on identifying areas of compliance or non-compliance with the relevant treaty as well as how the State under review intends to address the areas of concern. An OMB for a treaty on pandemic prevention and preparedness could elevate its support role by actively identifying types of UN support that would help parties do better and be better prepared. States could welcome such a powerful support role. This could particularly be the case where the shortcomings of a State were attributed to a lack of resources or expertise, triggering technical and other assistance to remedy the situation. The approach would require State cooperation and an independent monitoring and investigation system.

### Structure and composition

UN Members should consider a system akin to the one created under OPCAT that combines international and national components given the complexity of monitoring pandemic preparedness and response. Under OPCAT, the SPT at the international level and the National Prevention Mechanism (NPM) at the national level work collaboratively. Indeed, one expert suggested it would be hard to envisage an effective monitoring system of a treaty on preparedness without a national component built-in. The pandemic treaty should establish the national component and be prescriptive on the form and functions. The two entities of the OMB (international and national) should function collaboratively.

The OMB should have an overall composition of technical experts (clinical and social epidemiologists, medical doctors, nurses, medical anthropologists, public health officials, lawyers) rather than political appointees or nominees. Global diversity of OMB membership is essential. The treaty should prescribe a transparent and robust vetting process to achieve this.



## Monitoring Function

The experts suggested that the OMB receive one initial report from the state party covering the scope and range of their obligations under the treaty rather than a periodic report based on a template. After that, the OMB can direct the states on what elements of their obligations or preparedness they want them to report on and the required specific information. This is a more streamlined approach and could build on reporting systems already in place. The experts considered that the monitoring process should explicitly allow reports from other international organizations (FAO, IMF, World Bank, UNICEF, Oxfam etc.) and information from national human rights institutions and civil society organizations (CSOs). One expert underlined the importance of a constructive dialogue between the OMB and the state during the monitoring process to identify successes and the assistance required to meet the agreed standards.

## Investigations/Visits

The OMB requires the power to initiate an investigation in response to an emergency event identified through monitoring or in response to reports by relevant experts.

State parties should not be able to block the OMB from visiting. The European Convention on the Prevention of Torture (ECPT) guides addressing this in the pandemic treaty. Article 9(1) is concerned with the exceptional circumstances when a Party makes representations to the Committee against a visit proposed by the CPT. The sub-section sets out the grounds upon which a representation can be made. Article 9(1) triggers the consultation process set out in Article 9 (2). The CPT and the Party enter into consultations "to clarify the situation and seek agreement on arrangements to enable the Committee to exercise its functions expeditiously."

The OMB should have the capacity to visit the territory and see any relevant place, person or document when carrying out an investigation. Article 8(2)(d) of the ECPT sets out that a state shall provide the CPT with "...information available to the Party which is necessary for the Committee to carry out its task." The text means States are required to provide a wide range of materials the CPT requests without protest. However, the article also sets out "...in seeking such information, the Committee shall have regard to applicable rules of national law and professional ethics." This section of the article has allowed States to object to providing information based on domestic law provisions (data protection, national security or others). The CPT has made clear that "have regard to" does not mean "is bound by" and that under international law, States cannot invoke a domestic law provision to refuse to comply with international treaty obligations. The experts considered it better to avoid this conflict and set out the OMB powers to access documents, sites and other relevant materials. Consideration should also be given to the OMB's capacity to protect those with whom they speak, who may be whistleblowers or violate domestic legal provisions by sharing certain information with the OMB. The treaty could be explicit in prohibiting retaliation in any form against witnesses and sources for the OMB when conducting a visit or investigation and provide consequences if a State acts in retaliation.

## Decision/Voting process

The expert's views differed on whether the OMB's decision to take a particular action (conduct a visit, an investigation or issue a statement) should be subject to a simple or a supermajority (60%, 2/3). However, all agreed it could not be by a consensus or unanimity. The arguments made in defence of a requirement for a supermajority included that it lent greater credibility to the decision, as the case had to be strong enough to persuade at least 60% or 2/3 and not just 50%+1. The requirement for a supermajority would also protect against overly hasty action.

## Communication Protocols

The experts all indicated that the critical line of communication is between the OMB and the State. They also thought there should be explicit means for the OMB to communicate with a neutral authoritative body outside of the treaty system in emergency cases, such as the WHO Director-General, to avoid reducing a pandemic threat to bilateral discussions and decisions processes. Director-General. During and following an investigation, the OMB should have the flexibility to communicate with the State authorities and provide them with a preliminary report quickly and seek a rapid response to ensure action. Communications should not be dependent on adopting a country report at a plenary session of the OMB; plenary sessions do not occur frequently. For example, the CPT only meets in plenary three times a year. However, article 8(5) of the ECPT provides that "if necessary, the Committee may immediately communicate observations to the competent authorities of the Party concerned."