

# POLICY BRIEF

May 2021

## Independent Review and Investigation Mechanisms to Prevent Future Pandemics

### Executive Summary

Based on the proposal by the European Council, more than 25 heads of state and the World Health Organization (WHO) support development of an international treaty on pandemics, that planned to be negotiated under the auspices of WHO, will be presented to the World Health Assembly in May 2021.

Given that the treaty alone is not enough to ensure compliance, triggers for a high-level political response is required. To this end, to inform the design of a support system, we explored institutional mechanisms<sup>i</sup> with a mandate to review compliance with key international agreements in their signatory countries and conduct independent country investigations in a manner that manages sovereign considerations.

Based on our review, **there is no single global mechanism that could serve as a model in its own right**. There is, however, potential to combine aspects of existing mechanisms to support a **strong, enforceable treaty**. These aspects include:

- **Periodic review** - based on the model of human rights treaties, with independent experts as the authorized monitoring body to ensure the independence. If made obligatory, the review could support compliance with the treaty.
- **On-site investigations** - based on the model by the Committee on Prevention of Torture according to which visits cannot be blocked by state parties.
- **Non-negotiable design principles** - including accountability; independence; transparency and data sharing; speed; emphasis on capabilities; and incentives.
- **Technical support** - WHO can provide countries with technical assistance, tools, monitoring, and assessment to enhance emergency preparedness and response.

i. See methods and mechanisms reviewed at:  
[http://collections.unu.edu/eserv/UNU:8032/nIndependent\\_Review\\_Final.pdf](http://collections.unu.edu/eserv/UNU:8032/nIndependent_Review_Final.pdf)

## Periodic Reviews

Periodic reviews aim to assess states' implementation of the commitments made in an international agreement. A review panel can consist of all member states, a sub-group of states, or an external group of experts. Based on the periodic review findings, the state receives recommendations that it is expected to officially respond to and implement.

A review is a lengthy and resource-heavy process that can only be performed periodically. While not suitable for the prompt assessment required for outbreaks, it helps review countries' preparedness plans and assess the potential for response. To be effective, it must be linked to either a sanction or incentive mechanism.

A state-led Universal Periodic Review (UPR) or human right treaty bodies with a monitoring committee comprised of independent experts could be adopted as the basis for the model. If **made obligatory** for all signatories, it could become the main instrument to monitor state compliance with the new pandemic treaty.

As a first step and prior to a review, signatory states could be required to provide a **comprehensive initial report** that includes the political, economic and cultural context and country's preparedness plans. Subsequent reports could focus on particular issues as requested by the monitoring committee. These could be complemented by **reports from non-state sources**, such as civil society, human rights institutions, the UN and other agencies to promote transparency and data verification.

The treaty must also have provisions related to non-compliance with the periodic reporting, including the failure share information or implement recommendations. The consequences could include investigation visits, "naming and shaming," or legal consequences.

Whereas human rights treaty bodies often seek to identify violations, the mechanisms for the pandemic treaty could be seen as **helping states be better prepared** by identifying shortcomings and support required (financial, technical, commodities). The approach may incentivize better collaboration and transparency. This would be supplemented by **regular monitoring between the reviews**, linked to WHO's technical advice and capacity building mechanisms.

## On-site Investigations

On-site investigations verify that states comply with an international agreement by serving as an early warning and check-up mechanism. They can help identify the origin of disease outbreaks and assess the preparedness and response.

Currently, outbreak investigation visits require country consent and they rely heavily on the data provided by the state. As the time required to obtain consent can significantly delay investigations, on-site **visits that can take place announced or on short notice** as with agreements on nuclear and chemical weapon or prevention of torture, could help address this issue.

To this end, a clear description of "sites" needs to be defined (e.g., weapons treaties allow visits to declared production facilities, while "sites" under the optional protocol of prevention of torture is broader). Likewise, the "triggers" need to be defined. On-site **investigations should be stipulated as part of the treaty**, with a clear protocol and assigned authority for the process: the decisions to take action could be subject to a supermajority (60%, or 2/3) to justify invoking an extraordinary power, and the visits without state-specific consent could be conducted by an independent expert group to help mitigate political and financial pressure inherent to WHO.

Further, the investigations mechanism should define whether it is applied to all public health emergencies ("events" as per the IHR) or only to disease outbreaks; and whether it is

universal or only for those without investigation capacity (resource-poor countries). 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.

## Non-negotiable Design Principles

Lessons learned from other initiatives confirm the following as core design principles for an investigative treaty:

- **Compliance** - to encourage state adherence to the agreement.
- **Accountability** - to effectively trigger a high-level political response in cases of concern.
- **Independence** - to reduce financial and political dependencies (e.g., reviewers, investigators to be selected based on technical expertise).
- **Transparency and data sharing** - to ensure prompt access to information.
- **Speed** - to avoid requirement of consensus or unanimity to activate an investigation.
- **Emphasis on capabilities** - to assess political factors and leadership more broadly and provide expert support.
- **Incentives** - to motivate states to conduct reviews and grant access to on-site investigations.

## Technical Support

Further technical support and political stimulus are required to enable signatory states to comply with commitments made under the international pandemic treaty.

WHO can incentivize and complement these efforts. It has an essential role in providing countries with technical assistance, norms, 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.

For the full paper, including all source materials, please see:

[http://collections.unu.edu/eserv/UNU:8032/nIndependent\\_Review\\_Final.pdf](http://collections.unu.edu/eserv/UNU:8032/nIndependent_Review_Final.pdf)