

ICRC COMMENT AHEAD OF A/INB/11 (9-20 SEPTEMBER 2024)

This comment is designed to assist Member States negotiating the WHO Pandemic Agreement, building on the ICRC's ongoing engagement with States, previous comments, and comprehensive [policy brief](#) (August 2023). The following recommendations are essential if the pandemic agreement is to achieve its objective to effectively address Pandemic Prevention, Preparedness and Response (PPPR). Where concrete language is proposed, suggested changes are marked in bold, based on the latest text of 24 May.

1. Welcoming reference to international humanitarian law (IHL) as a guiding principle

Respect for IHL plays a critical role on the entire spectrum of PPPR efforts. ICRC welcomes the agreement to include full respect of IHL as a principle in Article 3.3, which covers all the applicable principles and rules.

2. Retain and strengthen commitments on safeguarding humanitarian action

The ICRC is encouraged to see references in Article 13.2 and the preamble to the importance of rapid and unimpeded access of humanitarian relief, consistent with international law. Safeguarding humanitarian access refers to the work of impartial humanitarian organisations operating under the humanitarian principles of humanity, neutrality, impartiality and independence. We strongly urge States to make explicit reference to respect for these humanitarian principles as this links directly to operational delivery by impartial humanitarian organisations – and note particularly that respect for impartiality in the delivery of humanitarian relief is a legal requirement under IHL. The ICRC proposes the following:

Art. 13.2

During a pandemic, the rapid and unimpeded access of humanitarian relief personnel, their means of transport, supplies and equipment and their access to pandemic-related health products shall be **allowed and** facilitated in a manner consistent with international law, **and in respect of the principles of humanity, neutrality, impartiality and independence for the provision of humanitarian assistance by impartial humanitarian organisations** ~~[including international humanitarian law and the Charter of the United Nations and its purposes and principles, [and the principles contained in Article 3 of this Agreement]] [with respect for sovereignty, and the principle of sovereign equality (DEL) (RETAIN)]~~.

Preamble 11.

Recognizing the importance of rapid and unimpeded access of humanitarian relief ~~[in accordance (DEL)]~~ ~~[consistent]~~ with international law, including international human rights law and international humanitarian law, ~~[and the provision of humanitarian assistance in line with resolution A./RES46/182.]~~ **and of the respect for of the [humanitarian (DEL)] principles of [sovereign equality,]** humanity, neutrality, impartiality and independence for the provision of humanitarian assistance **by impartial humanitarian organisations** ~~[with the consent of the affected country and in principle on the basis of an appeal by the affected country] (DEL)],~~

3. Equitable access to pandemic-related products

References to access to pandemic-related health products in humanitarian settings should be included in Article 13.1 to recognize the importance of this to effective PPPR and therefore to the basic functions of the Network, and to guarantee this consideration, regardless of the outcomes of the first, and future, Conferences of Parties (COPs). Based on the proposal that seems to command the most initial agreement, the ICRC suggests the following language:

Vice-chair proposal Art 13.1

The Global Supply Chain and Logistics Network (the GSCL Network) is hereby established to enhance, and facilitate work to remove barriers to, equitable, timely and affordable access to pandemic-related health products, **as well as access to such products including** in humanitarian settings consistent with

international law. The GSCL Network shall be developed, coordinated, and convened by WHO in partnership with relevant [Parties and other] stakeholders [NOTE: define stakeholders in Article 1] under the oversight of the Conference of the Parties. The Parties shall prioritize, as appropriate, sharing pandemic-related health products through the GSCL Network for equitable allocation based on public health risk and need, in particular during pandemic emergencies RESERVE].

Further, at the first COP, explicit consideration must be given to the needs of individuals in humanitarian settings and the challenges of delivering effective PPPR in these settings. As such, the ICRC welcomes the reference in Article 13.2(c) to those in fragile and humanitarian settings and recommends clarifying language as follows:

Article 13.2(c)

(c) consideration of the needs of developing countries and the needs of ~~[those in vulnerable situations]~~~~[vulnerable populations (DEL)]~~ ~~[and (DEL)]~~ **persons in vulnerable situations (DEL)**, including those in fragile and humanitarian settings;

4. Retain references to persons in fragile and humanitarian settings in the definition of ‘persons in vulnerable situations’

ICRC urges States to retain both the general definition of ‘persons in vulnerable situations’ in Article 1(g), and particularly the recognition of the specific vulnerability that persons living in humanitarian settings face as a result of their particular challenges in accessing effective PPPR. This conceptually underpins proposed operational language in Chapter II recognizing the specific requirements of persons living in such settings in Articles 6(2)(a), 13, 13*bis*, 17(3)(b) and 17(5), as well as language in Article 3.2. We note the use of ‘persons’ instead of ‘people’ in vulnerable situations has been agreed in a number of these draft operational provisions, and support this usage. The ICRC suggests clarifying language for Article 1(g) as follows:

Article 1(g)

(g) “[~~persons (DEL)/(RETAIN)]~~ **people** in vulnerable situations” means individuals, [as well as persons in] groups or communities with a disproportionate increased risk of infection, severity, disease or mortality [, as well as those likely to bear a disproportionate burden owing to social determinants of health] in the context of a pandemic. This is understood to include persons in fragile and humanitarian settings;

5. Retain and clarify references to liability and compensation in humanitarian settings

References to managing vaccine and therapeutic-related compensation and liability in humanitarian settings should be retained, clarified and considered during the first Conference of Parties (currently outlined in both Article 13.3 and Article 13*bis*.8). In particular, for both liability and compensation a) recognition should be given to the needs of persons in humanitarian settings, and b) explicit reference should be made to clarify that humanitarian actors are not expected to accept a transfer of liability in order to access products.

6. Encourage broad interpretation in relation to protecting the health and care workforce

Protection of health care from harassment, violence and threats is essential to ensuring effective PPPR. The ICRC welcomes the reference to protecting the health and care workforce from harassment, violence and threats in Article 7.2(c), and the recognition of the challenges they face in delivering PPPR in humanitarian settings in Article 7.1. However, the lack of reference to protecting hospitals and medical facilities, as well as medical means of transport and equipment – without which it is impossible for health and care workers to do their work effectively – represents a gap in the agreed language. If this language remains as is, we would strongly urge States to interpret ‘health and care workforce’ in its broadest possible meaning to include not only the health and care workforce, but also medical transports and equipment, and hospitals and other medical facilities. We would encourage the INB, and States, to make

interpretative statements to this effect, including upon adoption of the Agreement and at the first and future COPs.

7. Clarify that fragile and vulnerable settings are not a ‘threat’ per se.

The ICRC recommends States recognize that fragile settings are not threats per se but rather the lack of effective PPPR responses in these settings can exacerbate public health impacts.

Preamble 17.

Recognizing the importance and public health impact of ~~growing threats such as~~ climate change, poverty and hunger, ~~fragile and vulnerable settings~~, weak primary health care and the spread of antimicrobial resistance, **which have particularly severe impacts in fragile and humanitarian settings.**

The ICRC stands ready to provide further suggestions as required, and to share its experience and expertise in health assistance and protection in complex humanitarian settings.