



1 December 2023

To: Director General of WHO, Mr Tedros Adhanom Ghebreyesus

And to:

President of the Republic of South Africa, HE, Cyril Ramaphosa

Minister of Health, Republic of South Africa

Minister of International Relations and Cooperation, Republic of South Africa

Dear Mr Tedros Adhanom Ghebreyesus

**WHO – NOTICE OF REJECTION: 2022 AMENDMENTS TO INTERNATIONAL HEALTH REGULATIONS 2005
AS APPROVED ON 28 MAY 2022 DURING THE MEETING OF COMMITTEE A OF THE WORLD HEALTH
ASSEMBLY**

1. INTRODUCTION

As duly elected public representatives of the South African Parliament serving in the National Assembly, and as such on behalf of South Africa, we, the undersigned Members of Parliament, notify you of our rejection of the 2022 Amendments to the International Health Regulations of the International Health Regulations of 2005¹ (hereafter the “**2022 Amendments**”), based *inter alia* on:

- a. the absolute sovereignty of our country;
- b. our people’s right to participate in decisions;
- c. implications of adopted/proposed IHR amendments;
- d. the WHO acting ultra vires, outside of its scope; and
- e. the WHO violating its constitution and processes.

The International Health Regulations of 2005 will be referred to as “**IHR 2005**”. The 2022 Amendments provide for:

- i. amendments of articles 59, 55, 61, 62 and 63 of the IHR 2005 and
- ii. the establishment of the Working Group on Amendments to the International Health Regulations (2005), hereafter referred to as “**WGIHR**”.

2. LEGAL STANDING AND SOUTH AFRICAN CONSTITUTIONAL PROVISIONS

In terms of section 231 (1) of the South African Constitution, 1996, “*The negotiating and signing of all international agreements is the responsibility of the national executive.*”

Section 231 (2) states that “*An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3).*”

1 https://apps.who.int/gb/ebwha/pdf_files/WHA75/A75_R12-en.pdf

Section 231 (3) states that *“An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.”*

Section 231 (4) states that *“Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.”*

South Africa passed the International Health Regulations Act 28 of 1974 as amended by sections 46 and 47 of the Transfer of Powers and Duties of the State President Act, 97 of 1986.

In terms of section 231(5), South Africa *“is bound by international agreement which were binding on the Republic when the Constitution took effect”* (in 1996).

The International Health Regulations (2005), were adopted by the 58th World Health Assembly on 23 May 2005 and entered into force on 15 June 2007.

The International Health Regulations Bill, 2013, was published for comment in the South African Government Gazette (Notice 36931) on 14 October 2013 in terms of the constitutionally required public consultation process. This Bill sought to repeal the International Health Regulations Act 28 of 1974; to incorporate the International Health Regulations 2005 into South African domestic law in terms of section 231(4) of the Constitution in order to apply the International Health Regulations in South Africa and to provide for the matters connected therewith.

As far as we are aware, this Bill was not passed by the South African Parliament, which brings the domestication of the International Health Regulations 2005 into South African law in terms of the Constitution, and any future purported amendments to the IHR 2005 into question.

We are fully aware that the South African executive has been participating in the negotiations surrounding the amendments to the International Health Regulations at the WHO in terms of the powers set out in section 231(1) set out above.

However, section 55(2) of the South African Constitution, 1996, states that, *“The National Assembly must provide for mechanisms— (a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and (b) to maintain oversight of—(i) the exercise of national executive authority, including the implementation of legislation; and (ii) any organ of state.”*

In terms of the provisions of section 55(2) of the Constitution, we herewith exercise my constitutional oversight duties over the South African Executive by expressing our objection to amendments being proposed to the IHR 2005 until such a time as the South African Parliament has had the opportunity to consider these amendments after a public participation process. At the outset, we object to the amendment that would reduce the number of months Member States have to reject the IHR amendments from 18 months to 10 months. This amendment would make the democratic public participation process required by the South African Constitution very difficult, if not impossible, to comply with. We set out our full reasons for rejection below.

3. REASONS FOR REJECTION

1. Disregard for developing nations, exhibited by the WHO and the United Nations, including the UN ignoring a UNGA 78 letter of objection by 11 countries to its political declaration on pandemics;
2. The amendments proposed are not acceptable and they were not acceptable to the 47 nation African bloc that stood against these amendments in 2022 at the World Health Assembly 75;

3. There has been no public participation process, which is a flagrant disregard for basic human rights, and which creates a constitutional law crisis should the WHO choose to ignore this letter;
4. We do not consent to the proposed amendments to the IHR as we do not believe such amendments, facilitated by the WHO, to be in the public's best interest;
5. The WHO is acting *ultra vires* and outside its scope of authority in attempting to make its recommendations binding on member states, thus violating national self-determination;
6. The WHO's violations of its own laws and processes on notice periods, quorum for voting, *et al*, which render the entire IHR amendment and adoption process null and void in law;

4. FUTURE PROPOSED AMENDMENTS THAT WE BELIEVE VIOLATES NATIONAL SOVEREIGNTY INCLUDE:

Article 12: Removing the right of sovereign nations to oppose the declaration of a health emergency within their jurisdiction. Individual nations will no longer need to **agree** with the Director-General's determination that events in their own country constitute a Public Health Emergency of International Concern (PHEIC). Even the International Health Regulations Review Committee raised concerns in their Final Report regarding the implications that this proposed amendment would have on national sovereignty.

Proposed Amendment (United States) *"If the Director-General determines and the State Party are in agreement regarding this determination that the event constitutes a public health emergency of international concern, the Director-General shall, in accordance with the procedure set forth in Article 49, seek the views of the "Emergency Committee" on appropriate temporary recommendations."*

IHRRRC Technical Recommendation: *"Proposed amendments in paragraph 2 dilute the consultation requirements with the State Party in whose territory the event occurs, by removing the obligation of the Director-General to convene an Emergency Committee, and by removing the agreement between the Director-General and the State Party. It is unclear what the purpose is of the proposed amendments to eliminate the consultation with the State Party in whose territory the event occurs... Excluding this consultative step can result in sovereignty concerns from the State Party in whose territory the event occurs."*

According to the principle of *jus cogens* (compelling law), customary international law is law unless it is inconsistent with the Constitution or an Act of Parliament. Therefore, while South Africa is not a signatory to the Vienna Convention, it is bound by the provisions of the convention, and in terms of the convention, States can only be bound to treaties or international agreements if valid consent has been given by the State.

5. PROCEDURAL REASONS FOR REJECTION OF 2022 IHR AMENDMENTS

No valid consent has been given for the 2022 Amendments of the IHR 2005

- The 2022 Amendments provide, *inter alia*, that amendments to the IHR 2005 will automatically enter into force after 12 months after the notification of the adoption of the amendment, unless a notice of rejection of such amendment is sent to you within 10 months.
- More specifically the 2022 Amendments provide in article 59 1bis: *"The period provided in execution of Article 22 of the Constitution of WHO for rejection of, or reservation to, an amendment of these regulations shall be 10 months from the date of the notification by the Director General of the adoption of an amendment to these Regulations by the Health Assembly. Any rejection or reservation received by the Director-General after the expiry of that period shall have no effect."*

- Pursuant to the 2022 Amendments the period for rejection is reduced from 18 months to 10 months after adoption and notification of any amendments to the IHR 2005. The 2022 Amendments reduce the possibility for members of WHO, or their Parliaments or citizens, to reject or make reservations to any amendments.
- The validity of the 2022 Amendments is also of importance because WHO has published on its website draft amendments to the IHR 2005, to be passed in May 2024, providing that WHO may issue binding recommendations.² So WHO intends to acquire the power to impose binding legal instructions on Members of WHO instead of providing recommendations.
- We believe that the 2022 Amendments have not been validly adopted because:
 - i. The 2022 Amendments were accepted without a vote on the basis of tacit approval, without a record of which representatives of which Members were present on May 27, 2022;
 - ii. The 2022 Amendments were presented to the other Members on May 24, 2022³; article 59 of the IHR 2005 provides that amendments have to be presented to the Members at least four (4) months prior to acceptance.⁴

Article 11 of the Vienna Convention provides that consent can be given by signature, exchange of instruments, ratification, acceptance, approval or accession, or by any other means so agreed. The WHO Constitution provides that consent on behalf of a Member can be given for amendments to the Constitution or any other legal instruments can be made on the basis of voting.

However, with respect to the 2022 Amendments on May 27, 2022 no voting had taken place. Furthermore, no record was kept, as to which representatives were present during the Committee A meeting.

Because the amendments were not timeously presented, not four months but only three days before May 27, 2022, States did not have the required four months period to review the 2022 Amendments before they were adopted. Because there was no vote, there was no record as to which representatives were present (as to our knowledge) and which Members of WHO voted in favour of the 2022 Amendments.

6. NO VOTING PROCESS ON MAY 27, 2022

The absence of a normal voting process by the General Assembly of WHO on 27 May 2022 can be seen on this montage : <https://www.youtube.com/watch?v=M393lvg1650&t=466s>.

The full montage can be seen here: <https://www.who.int/about/accountability/governance/world-health-assembly/seventy-fifth-world-health-assembly>. The tacit so-called “approval” occurred near the end of the 12th session of Committee A on May 27, 2022. 18:00 - 20:05.

As a matter of formal procedure, we reject the 2022 Amendments because the formal voting procedure, was not followed and the 2022 Amendments reduce the opportunity for WHO members to reject or make reservations to future amendments of the regulations.⁵

7. CRITICISM ON PROPOSED FUTURE AMENDMENTS OF THE IHR 2005 IN MAY 2024

The lack of validity of the 2022 Amendments is of importance because WHO has published on its website draft amendments to the IHR 2005, to be passed in May 2024, providing that WHO may issue binding recommendations.

8. THE WHO CONSTITUTION

2 https://apps.who.int/gb/wgihhr/pdf_files/wgihhr1/WGIHR_Compilation-en.pdf

3 https://apps.who.int/gb/ebwha/pdf_files/WHA75/A75_ACONF7-en.pdf

4 https://www.afro.who.int/sites/default/files/2017-06/international_health_regulations_2005.pdf

5 https://apps.who.int/gb/wgihhr/pdf_files/wgihhr1/WGIHR_Compilation-en.pdf

In our view amending the IHR of 2005 is not the right legal instrument to change the powers of WHO. A change to the WHO Constitution would be necessary and this requires a two third majority in accordance with Article 73 of the WHO Constitution. Pursuant to Article 73 of the WHO Constitution, proposed amendments have to be presented to members **six (6) months** before their consideration by the Assembly.

At this point in time an amendment to the WHO Constitution cannot be proposed during the Assembly in May 2024 as the six month period cannot be observed. The Report of the Review Committee regarding amendments to the International Health Regulations (2005) confirms on p.26 that the Committee is also of the opinion that to change recommendations from non-binding to binding requires other changes, probably meaning an amendment of the WHO Constitution. In view of this, the Committee recommends that the recommendations should remain non-binding.

9. REJECTION OF THE INSTALLATION OF THE WGIHR

The WGIHR has been established to work on the amendments to the IHR 2005 behind closed doors. Because the 2022 Amendments have been adopted without a normal voting procedure, we reject and oppose the delegation of the preparation of any amendments to the IHR 2005 to the WGIHR.

We require the WHO and/or the WGIHR to provide full transparency as to who is part of the working group. We also require full access to all documents which have been circulated and are to be circulated between members of the WGIHR (and its advisors) and full access to future meetings of the WGIHR.

It has been communicated that the WGIHR will not provide the amendments to be presented in the assembly of May 2024 four months in advance as required by Article 55 section 2 of the IHR 2005. We confirm that we will object to any breach of Article 55 (2) if such amendments will not be provided at least four months before the General Assembly in May 2024.

We do not approve of the installation of the WGIHR due to the lack of transparency. Not only are we as Members of Parliament not invited to participate or informed, neither is the general public. In the main stream media almost nothing is mentioned about what is taking place behind closed doors.

10. REQUEST TO PRODUCE EVIDENCE

1. On its homepage WHO displays a pdf-document with the title Amendments to the International Health Regulations (2005); WHO Health Assembly decision of 28 May 2022; reference WHA75.12; Agenda item 16.2; dated 28 May 2022; internet reference: https://apps.who.int/gb/ebwha/pdf_files/WHA75/A75_R12-en.pdf, hereinafter referred to as the Formal Decision.
2. This document is marked as a “certified copy” and was executed to apparently serve as a formal proof for and a confirmation of a vote held by the WHO’s World Health Assembly’s (WHA’s) 8th plenary meeting on 28 May 2022 on certain amendments to the International Health Regulations.
3. According to this Formal Decision the reason for this vote was a proposal for amendments to the International Health Regulations (2005) originally submitted by the United States of America, which included in its Annex several proposed amendments, referenced as Document A75/18 and published on the WHO homepage under link https://apps.who.int/gb/ebwha/pdf_files/WHA75/A75_18-en.pdf.
4. According to the Annex of the executed Formal Decision of 28 May 2022, the final vote of the WHA (reference WHA75.12; Agenda item 16.2) was taken on specific amendments to the IHR, **all focused on Art. 59 IHR 2005 regarding the period for entry into force and the period for rejection or reservations** regarding any amendments to the IHR 2005.
5. As a consequence of this change of Article 59 regarding the periods for entry into force, rejections and

reservations, also all connected articles of the IHR 2005 were amended accordingly, i.e.: Art. 55; Art. 61-63 and Art. 69 IHR.

6. Thus, in the essence, the vote on the Formal Decision was taken on two significant changes:

A significant reduction of the periods provided for under Art. 59 IHR (2005) regarding the entry into force and regarding any rejection or reservation on IHR-amendments as follows:

- i. the period for the automatic entry into force of any amendments: Reduction from the original 24 months to 12 months (Art. 59 para. 2 amended IHR); and
- ii. the period for rejecting or expressing reservations on amendments to the International Health Regulations (reduction from 18 to now 10 months (Art. 59 para. 1bis amended IHR).

Furthermore, we , acknowledge and confirm:

7. That based on Art. 21 and Art. 60 lit. (b) WHO Constitution: *“Decisions on other questions [than those specified under Art. 60 lit. (a) WHO Constitution] [...] shall be made by a majority of the Members present and voting.”*
8. That therefore the 18 month period for rejection and the 24 month period for entry into force of the above mentioned significant changes can only have been validly adopted by the World Health Assembly, if the vote of its 8th plenary meeting on 28 May 2022 on these changes was correctly executed by way of a majority of the Members present and voting.
9. That without clear evidence of this vote being proper executed according to Art. 60 lit. (b) WHO-Constitution none of the two changes can have been adopted by the WHA neither of the two periods (24 month period for entry into force and the 18 month period for rejection or reservations) did ever start to run.
10. That provided such evidence can be correctly produced, the 24 month period for entry into force would expire on 31st May 2024 and the 18 month period for rejection or reservations on the reduction of these periods would expire on 30 November 2023.
11. That currently the IHR are subject to a far-reaching revision-process under the guidance of the Working Group on Amendments to the International Health Regulations (2005)⁶ , which has published a first draft by end of 2022 under the title of Article-by-Article Compilation of Proposed Amendments to the International Health Regulations (2005).⁷
12. That this first Article-by-Article Compilation draft of the amended IHR shows a wide range of far-reaching modifications to the IHR 2005 and that such amendments might have the potential to impact the constitutional order, the democracy and civil liberties of all WHO Member States.
13. That under no circumstances (particularly given the continuing far-reaching process of IHR-revisions going on) a proper democratic process can be allowed to be hindered nor reduced by any unduly shortened periods for entry into force nor by any unduly shortened periods for rejection or reservation on IHR-amendments.
14. That therefore it is of utmost importance that such periods will by no means be reduced as a result of violation of the due procedure as described above and foreseen under the Constitution of the WHO.
15. That we are not in the position to find such evidence on the homepage of the WHO, i.e. evidence that

6 WHO Homepage, site of the IHR Working Group: <https://apps.who.int/gb/wgihr/>

7 WHO Homepage, site of the IHR Working Group:
https://apps.who.int/gb/wgihr/pdf_files/wgihr1/WGIHR_Compilation-en.pdf

the vote of its 8th plenary meeting on 28 May 2022 on these changes was indeed correctly executed by way of a majority of the Members present and voting as foreseen under Art. 21 in conjunction with Art. 60 lit. (b) WHO Constitution.

11. REQUEST

We therefore request that you deliver conclusive and unambiguous evidence, that the vote of its 8th plenary meeting on 28 May 2022 (WHA75.12; Agenda item 16.2; dated 28 May 2022) on these changes was correctly executed by way of a majority of the Members present and voting as foreseen under Art. 21 in conjunction with Art. 60 lit.(b) of the WHO Constitution, i.e. setting out (i) the exact number of members present at this vote, and (ii) the exact number of members voting in favour of this IHR-amendments.

We request that you deliver this evidence in the form of a link to an uninterrupted video within 7 days (by 8 December 2023) to the following email addresses: sswart@parliament.gov.za and abouwer@parliament.gov.za .

Should the requested information not be received by this date, we, the undersigned Members of Parliament submit that the Amendments to the International Health Regulations (2005); WHO Health Assembly decision of 28 May 2022; reference WHA75.12; Agenda item 16.2; dated 28 May 2022 are legally null and void.

12. CONCLUSION

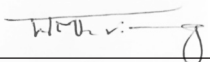
In the spirit of transparency, we give consent for this letter of rejection to be entered into your records, and published on the WHO website, along with the rejection or reservation letters issued by other parliamentarians and/or the people of other countries.

Please acknowledge receipt of this letter. We await to hear further from you in this regard.

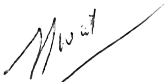
Yours sincerely



REV. KENNETH MESHOE, MP



WAYNE THRING, MP



STEVEN SWART, MP



MARIE SUKERS, MP

Members of Parliament, National Assembly, Cape Town
Representing the African Christian Democratic Party
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