

# LOCATING EQUITY IN THE DRAFT NEGOTIATING TEXT OF PANDEMIC INSTRUMENT

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# SCOPE AND OBJECTIVE ( ARTICLE 2 )

The objective of the WHO Pandemic Agreement, guided by equity, the right to health and the principles and approaches set out herein, is to prevent, prepare for and respond to pandemics, with the aim to comprehensively and effectively address systemic gaps and challenges that exist in these areas, at national, regional and international levels.

# EQUITY ( ARTICLE 3)

Equity is at the centre of pandemic prevention, preparedness and response, both at the national level within States and at the international level between States. It requires, inter alia, specific measures to protect persons in vulnerable situations. Equity includes unhindered, fair, equitable and timely access to safe, effective, quality and affordable pandemic-related products and services, information, pandemic-related technologies and social protection.



# EQUITY PROVISIONS

Article 9: Research and Development

Article 10: Sustainable Production

Article 11: Transfer of Technology

Article 12: Access and Benefit Sharing

Article 13: Global Supply Chain and Logistics

Article 14: Regulatory Strengthening

Article 16: International Collaboration and Cooperation

Article 19: Financing



# R&D

## ❑ Four paragraphs

- Obligation to build pandemic R&D capacities, particularly in developing countries and promotion of collaboration and access to research results through open science
- Obligation to promote investment, technology co-creation and participation of relevant stakeholders
- Obligation to establish clinical trial policy, establishments, infrastructure etc subject to national laws
- Obligation to publish conditions for publicly funded R&D subject to national laws

## ❑ No mechanism at the international level

## ❑ Heavily qualified



# SUSTAINABLE PRODUCTION

- ❑ First para
- Obligation on parties to designate production for the supply of national and regional level
- Obligation to encourage “*entities, including manufacturers within their respective jurisdictions, in particular those that receive significant public financing, to grant, subject to any existing licensing restrictions, on mutually agreed terms,*”
- Obligation to actively participate in WHO technology transfer programs
- ❑ Special needs of developing countries are ignored

# ...SUSTAINABLE PRODUCTION

## □ Second Para

- Measures to enhance investment in production

## □ Third Para

- Encourage waiver of royalty
- Promote the publication of licensing agreements
- Promote Voluntary License

# TRANSFER OF TECHNOLOGY

## ❑ First para

- CoP shall strengthen existing or develop innovative multilateral mechanisms to transfer technology on mutually agreed terms as appropriate

## ❑ Second Para

- *“coordinate with, collaborate with, facilitate and incentivise the manufacturers of pandemic-related products to transfer the relevant technology and know-how to the manufacturer(s) on mutually agreed terms as appropriate”*

*“make available non-exclusive licensing of government-owned technologies on mutually agreed terms as appropriate, for the development and manufacturing of pandemic-related products, and publish the terms of these licenses”*



# ...TOT

- ❑ Make use of TRIPS flexibilities and fully respect the use of such flexibilities by others
- ❑ Develop a database
- ❑ Para 3
  - commit to agree upon, within the framework of relevant institutions, time-bound waivers of intellectual property rights
  - Encourage patent holders to waive or manage royalties
  - Encourage manufacturers to share trade secrets
- ❑ Para 4
  - Parties shall take steps so that negotiated provisions do not interfere with the full use of the flexibilities provided in the TRIPS Agreement



# ABS

❑ Establishes WHO PABS

❑ Issues:

- The scope is limited only to the pandemic
- Only **one** SMTA to regulate transfer from WHO Lab networks to companies
- SMTA will be **negotiated in future** i.e. only after the adoption of the pandemic instrument

# GLOBAL SUPPLY CHAIN AND LOGISTICS

- ❑ Establishes WHO SCL
- ❑ Details will be worked out later
- ❑ No mandated procurement
- ❑ Bears the danger of more concentration and dependency
- ❑ Decoupled from the sustainable production

# ISSUES OF CONCERN

- ❑ No Concrete deliverables
- ❑ Heavily qualifies or best endeavour clauses
- ❑ Lack of agency at the international level for coordination and implementation
- ❑ No CBDR
- ❑ Unbalanced approaches compared to articles 4, 5, 6 & 7
- ❑ CSO need to tell out govt to make the negotiating text balanced prior to the negotiation