



## **Ongoing Negotiation of a Pandemic Accord: South Centre's intervention to WHO Intergovernmental Negotiating Body to draft and negotiate a WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response**

**18 September 2024**

The instrument needs to cover:

1. Commitments from governments to transparency, including in their procurement contracts and support to the objectives of the Global Chain and Logistics Network (GSCL) network for the equitable allocation based on public health need during pandemics
2. Sharing of vaccines, treatments and diagnostics (VTDs) that can be done by governments themselves. For example, in proportion of procured VTDs that can be put aside as donations, and limiting national stockpiling.
3. Real time allocation by manufacturers for developing countries, which should be at least 20% of real-time production of VTDs, as part of benefit sharing in relation to Pathogen Access and Benefit-Sharing System (PBAS) under art 12

**On Article 12**, Pathogen Access and Benefit-Sharing System: we are concerned that the key issues may be subject to future negotiation in a separate instrument. We note that the reference to “[arising from the sharing of]” PABS Materials and Sequence Information for public health purposes” remains without agreement. For consistency with CBD/Nagoya Protocol, it would be preferable to refer to “the benefits arising from the “use” or “utilization” of PABS Materials and Sequence Information.

**On Article 11**, Transfer of Technology and Know how for the production of pandemic-related health products: the proposed definition of transfer of technology in New1(j)Alt footnote, is highly problematic.

**New 1(j) Alt / footnote under Article 11:**

Transfer of Technology is understood to mean non-coercive transfer and on mutually agreed terms. This understanding is without prejudice to other measures that parties may take pursuant to their domestic and/or national legislation, provided that such measures are consistent with their relevant international obligations regarding intellectual property.

There is no international precedent for such definition. Moreover, the use of the word “non coercive” is political, not technical.

Technology transfer can be compelled by governments, through policies, or the judiciary system, for example to advance the public interest including public health or can refer to the contractual terms under which technology transfers are mutually agreed and voluntary.

The case of compelled technology transfer is different from “coercive”, and the referent should be whether it is compliant with international law. Examples of compelling technology transfer can be in relation to preconditions to establish or operate in a foreign market, for which firms (owners of technology) have the choice to enter or not. A government can determine that for a company to be permitted to operate in the market under the same conditions as local firms, local content or locally sourcing requirements involving technology transfer to local suppliers, joint venture requirements including sharing of technology, or requirements for firms to invest in R&D locally and make the outcomes locally available, shall apply. This is not ‘coercive’.

We strongly recommend deletion of the first sentence in the proposed footnote.