

Operationalizing Fair and Equitable Benefit Sharing for the COVID-19 Pandemic Background Note

The Convention on Biological Diversity (CBD) and its Nagoya Protocol on Access and Benefit Sharing are binding international instruments. The CBD has 196 Parties while the Nagoya Protocol has 116 Parties.

The foundation of these instruments is that States have *sovereign rights* over their own natural resources and that access to genetic resources is subject to *prior informed consent* (PIC) of the State providing the resources, and further requires *fair and equitable sharing of benefits* arising from the commercial and other utilization of genetic resources with the State providing such resources. Access and benefit sharing should be on *mutually agreed terms* (MAT). **Pathogens such as COVID-19 are within the scope of these instruments.**

The sharing of pathogen samples and sequence information is crucial for the rapid development of diagnostics, therapeutics and vaccines. In 2011, the World Health Organization adopted a historic landmark agreement known as the Pandemic Influenza Preparedness Framework (PIP Framework) that sets out international rules in WHO with regard to access to influenza viruses of pandemic potential (IVPP) and fair and equitable sharing of benefits arising from their use. For the first time, access to IVPP was linked on an “*equal footing*” to access to vaccines and other benefits.

The PIP Framework is a multilateral instrument built on CBD principles of access and benefit sharing with commitments on access to medicines, vaccines and diagnostic kits to enable treatment in developing and least developed countries.

With this Framework, WHO has entered into binding contracts with biopharmaceutical manufacturers securing firm commitments to deliver diagnostics, anti-viral products and vaccines during the time of a pandemic.ⁱ According to WHO, through 13 signed Standard Material Transfer Agreement (SMTA) as at May 2019, it has secured approximately 420 million doses of pandemic vaccine and 10 million treatment courses of antivirals that it would be able to send to countries in need at the time of a flu pandemic.ⁱⁱ The SMTA also provides the option of manufacturers providing royalty free licenses to manufacturers in developing countries for the production of pandemic influenza vaccines, adjuvants, antiviral products and diagnostics needed in a pandemic.

The scope of the PIP Framework is limited to influenza viruses of pandemic potential and would not extend to COVID-19. **Notably, however, the discussion on sharing of other pathogen samples and digital sequence information as well as fair and equitable benefit sharing was well underway in WHO, before the COVID-19 outbreak stalled the discussion.**

The international binding obligation of fair and equitable benefit sharing of the CBD and its Nagoya Protocol and its operationalization by securing binding commitments from relevant manufacturers are very relevant and valid in the context of COVID-19.

In January 2020, China rapidly shared the sequence information for COVID-19. Since then, the sharing of COVID-19 samples with reference laboratories for rapid confirmation and analysis, as well as the sharing of digital sequence informationⁱⁱⁱ has continued. It is this sharing that is enabling the research and development of diagnostics, medicines and vaccines across the world.

However, the concern is that this sharing of samples and digital sequence information is not reciprocated equitably, as seen by the scramble for medical supplies globally with developed countries, especially the United States and European states leveraging their political and financial clout at the expense of developing and least developed countries.^{iv}

Hence the call on the United Nations to work with WHO to secure binding commitments from pharmaceutical and other manufacturers with the aim to support the needs of developing and least developed countries as mentioned in the attached letter.

ⁱ <https://www.who.int/influenza/pip/smta2/en/>

ⁱⁱ https://www.who.int/influenza/pip/smta2/SMTA2_catA_23may2019.pdf?ua=1

ⁱⁱⁱ <https://us8.campaign-archive.com/?e=&u=c35eb4938c7246655f6384192&id=ed3642c7ae#Corona>

^{iv} <https://www.nytimes.com/2020/04/09/world/coronavirus-equipment-rich-poor.html?action=click&module=Well&pgtype=Homepage§ion=World%20News>