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Written Comment Re: Stakeholder Listening Session 1 for the INB

Public Citizen welcomes the opportunity to submit written remarks related to the Intergovernmental Negotiating Body (INB) and proposed WHO convention, agreement, or other international instrument on pandemic prevention, preparedness, and response, henceforth referred to as “the Draft.” We are encouraged by language in the Draft supporting the sharing of knowledge, technology transfer and surmounting intellectual property (IP) barriers and ask that the U.S. government play a supportive role toward each of those values. There are several opportunities for the Draft to make more practical efforts toward equitable access to medical products during pandemics. We take this opportunity to highlight instances in the text concerning equitable access and urge the U.S. government to support a pandemic accord that prioritizes equity.

As a general comment, we are concerned about the U.S. not supporting access to negotiating texts. Transparency throughout the negotiation process is necessary to inform all stakeholders working towards pandemic preparedness.

The following sections provide comments on specific provisions of the Draft text.

Prioritizing access to technology and knowledge

Chapter III, Article 7 addresses promoting sustainable and equitably distributed production and transfer of technology and know-how. The COVID-19 pandemic exposed the gaps in global pandemic preparedness and response, which saw high-income countries and pharmaceutical companies controlling manufacture and supply of medical tools while low-income countries went without. This inequity has prolonged the pandemic, led to additional lives lost unnecessarily, and caused enormous economic damage. In order to adequately respond to future pandemics, countries should collaborate through open sharing of technology and knowledge to facilitate a rapid and effective global pandemic response.

Article 7.1

This article addresses the need for increased manufacturing capacity that is equitably distributed. Building local manufacturing capabilities is key to ensuring equitable access to medical countermeasures. Additionally, sharing of knowledge helps to prevent shortages and advance science. To that end,

governments should take specific actions towards sharing technology and know-how, investing in the development of manufacturing facilities, and removing IP barriers to sharing technology and knowledge.

Article 7.2

This article calls for the development of multilateral mechanisms that promote sharing technology and know-how to manufacturers on “mutually agreed terms.” While we welcome the acknowledgement that multilateral mechanisms are needed to facilitate technology transfer, the Draft should acknowledge the need for mandates as well as voluntary mechanisms to facilitate the sharing of technology.

Article 7.3

This article concerns the establishment of technology and know-how sharing mechanisms during inter-pandemic periods. Articles 7.3a and 7.3c should acknowledge the need for mandated technology transfer and sharing of relevant intellectual property alongside voluntary measures.

We take note of Article 7.3a’s reference to utilizing technology transfer hubs, like the WHO-backed mRNA technology transfer hub program in South Africa,¹ to develop pandemic-related products quickly through shared technology, collaborative R&D, and funding. Supporting technology transfer and regional manufacturing hubs will prevent shortages, like those seen during the COVID-19 pandemic, and enhance global pandemic preparedness and response.²

Article 7.4

This article concerns waiving intellectual property rights in the event of a pandemic. This section does not create practical mechanisms or obligations to waive aspects of intellectual property rights or share technology and know-how. The Draft should oblige governments toward specific actions including mandating technology transfer and intellectual property rights waivers in order to ensure equitable access to countermeasures.

Increasing research and development (R&D) capacity

Chapter III, Article 9 aims to increase R&D capacities for pandemic-related products, particularly in developing countries. Long-standing public investment was at the heart of the speed at which COVID-19 vaccines were developed. For this reason, increased investment in R&D with strong conditions on pandemic-related products developed with public funding are necessary for an equitable pandemic response.

¹ World Health Organization. The mRNA vaccine technology transfer hub. <https://www.who.int/initiatives/the-mrna-vaccine-technology-transfer-hub>

² Public Citizen. Letter to President Biden requesting support for the mRNA Technology Transfer Hub Program. <https://www.citizen.org/wp-content/uploads/letter-to-biden-mrna-hub-funding.pdf>

Article 9.2

Government support for R&D is a powerful tool and these public investments need strong conditions for the sharing of technology and knowledge with manufacturers in developing countries. Public collaboration developed the NIH-Moderna vaccine, yet Moderna dictated its pricing, allocation, and sharing of technology and know-how, in a process that lacked transparency.³ The Draft should provide language to empower governments that invest in vital R&D to require conditions for access, without which we risk allowing corporate control to compromise vaccine access and slow the pandemic response.

Article 9.3

This article endeavors to increase transparency around publicly funded R&D. While the Draft proposes increasing transparency of publicly funded R&D through disclosing prices and contractual terms for public procurement, this still falls short in the pursuit of ensuring equity during pandemics. Further efforts should be made to ensure transparency of manufacturer pricing policies in order to assess whether prices are justified and equitable. The COVID-19 pandemic highlighted the power imbalance between manufacturers, governments, and procurement agencies, which has resulted in high prices and inequity.

Practical measures for access and benefit sharing

Chapter III, Article 10 proposes a framework for pathogen access and benefit sharing. The consensus among the access community is that more concrete obligations are needed to provide benefit sharing to ensure equitable access.⁴ To that end, the Draft's proposal of reserving 20% of products for 80% of the global population is insufficient. Allocation of medical countermeasures should be based on need, not on a country's ability to pay high prices.

We appreciate the opportunity to comment. Thank you.

³ Public Citizen. How inadequate supply drives inequities in global COVID-19 access.

<https://www.citizen.org/article/how-inadequate-supply-drives-inequities-in-global-covid-19-access/>

⁴ <https://www.southcentre.int/wp-content/uploads/2022/12/Pandemic-treaty-INB-South-Centre-statement-2.pdf>;
<https://www.keionline.org/38203>; <https://www.twn.my/title2/health.info/2023/hi230207.htm>