



South Centre Statement

WHO proposed instrument on pandemics: the Conceptual Zero Draft needs substantial improvement to address global public health needs

We welcome the discussions in the WHO on a new instrument on pandemic prevention, preparedness, response and recovery. While we appreciate the preparation and sharing with WHO members of the Conceptual Zero Draft (hereinafter 'the Draft'), we note that more work is needed to address the insufficiency of the tools at the disposal of the WHO that became evident with the COVID-19 pandemic.

As widely recognized, the WHO did not have the tools to give an effective global response to COVID-19. The inequality in access to vaccines will probably remain one of the major failures of the international community in the 21st Century. The analysis of the Draft needs, hence, to address a fundamental question: **will the actions proposed in the Draft, in the way in which they are formulated, prevent that a situation like the one experienced during COVID-19 be repeated?**

The new instrument to be negotiated should contribute to establish a stronger international health framework, with WHO as the governing authority for global health not only *de facto* but *de jure*. This means that a truly multilateral mechanism to coordinate the global, equitable distribution of pandemic response products, and rules that avoid hoarding by wealthier countries of such products, should be essential elements in the instrument to be negotiated. It should be based on principles of equity, solidarity, inclusiveness and transparency, and allow for collective and coordinated action that ensures universal and equitable access to diagnostics, vaccines and medicines needed to address a pandemic. But such principles need not to remain on paper. They must be effectively operationalized through appropriate provisions and mechanisms.

The Draft currently does not contain the necessary elements. The instrument needs to define with precision which are the specific issues and instances where coordination, collaboration and solidarity are needed, and define what are the multilateral mechanisms by which Parties will ensure that these happen, what are the obligations that Parties should take, and what mandates should be given to WHO and other agencies, as appropriate, to ensure the outcomes. A major gap in the Draft is that it does not even outline such a mechanism. If this gap is not addressed, the COVID-19 situation is likely to be reproduced and developing countries -where the largest part of the world population lives- will suffer severely again under a model that prioritizes commercial interests over public health needs.

The preambular provisions should be shortened and negotiated once an agreement on the substantive provisions has been reached; they should remain concise and be relevant for the interpretation of the instrument's substantive provisions. The Draft is selective in suggesting non-binding elements, referring to "promotion" rather than straightforward obligations. In some provisions, "Parties" are referred to; in many others, measures/actions are to be taken by "each Party", while the rationale for the choice between collective and individual responsibilities is not clear. Moreover, the Draft fails to present an adequate balance of legal rights and obligations of countries at different levels of development.

In the Draft there is also a predominant use of 'include' or 'including' in defining the actions to be taken, thereby leaving a lot of ambiguity. The Chapter III title and its provisions should be reworked around the objective of enhancing the global effort towards the production of timely and equitable access to needed products, and dissemination of health technologies and know-how. A separate and concrete section should address in a balanced manner the key issue of benefit sharing derived from access to pathogens. The Draft only commits to develop in the future provisions on the matter, while it is specific in proposing rules on pathogen sharing. Although the competence of different international organizations needs to be considered, this should not be an impediment to incorporate commitments not to challenge measures, such as the suspension of intellectual property rights, to the extent that such rights may create obstacles for technological diffusion and the rapid expansion of manufacturing capacity to combat a pandemic.

In summary, the Draft needs to be significantly improved and better focused on the essential building blocks of a new and robust multilateral system, organized under the direction of WHO, capable of effectively providing the tools to prevent and combat new pandemics on a global scale led by public health needs. The South Centre, pursuant to its mandate, remains available to provide specific analyses and to discuss with developing country negotiators how to reflect their interests in the proposed instrument.

References

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