

WHAT DOES EQUITY MEAN TO YOU?

BY ROSALIND TURKIE

In December 2021, Member States of the World Health Organisation agreed to initiate a global process for drafting an accord on pandemic preparedness and response, to ensure that the world will be better prepared for future pandemics than it was for Covid-19. At the heart of the accord is the need to ensure equity regarding access to health technologies and tools for all people. However, two years in and one week from the intended May finish line, countries are at an impasse regarding several controversial issues (including technology transfer, management of intellectual property, transparency, and pathogen access and benefit sharing) and much of the initial goodwill has faded. Innovarte explores what equity has come to mean throughout the negotiating process, and whether this basic principle has survived.

Equity, not to be confused with equality, recognises the imbalances that stem from not everyone starting off on the same footing or with the same advantages. In practice, equity involves adjusting to these imbalances, for instance by differentiating between vulnerable groups, including special treatment for individuals in vulnerable situations, such as humanitarian settings.

Fair access to countermeasures

For Luis Villaroel (Director, Innovarte), these adjustments can be made by ensuring fair and non-discriminatory access to information, prevention measures and access to countermeasures, such as vaccines, during a pandemic.

‘Operationalizing this requires expanding the availability of such countermeasures at accessible prices. To do so we need to increase the capacity to research, develop and produce countermeasures, and ensure that this is geographically diversified. To this end, technology transfer is essential. This can be voluntary, but should become compulsory when the former does not take place on time and within the required scope.’

Villaroel explains that the accord’s current proposal for a Pathogen Access and Benefit-Sharing system (PABS) will not be enough to ensure equitable access, as it fails to address this key point – how to expand and diversify the development and production of pandemic countermeasures.

Finally, it must be considered how equity relates to financing. ‘Global prevention is one of the key ambitions of many of the developed countries negotiating this accord, but this requires sufficient and predictable financing to not unfairly burden the health systems of less developed nations.’

Sharing of Technology and IP

One of the goals of the agreement is to enable poorer nations to produce vaccines more quickly, which requires access to intellectual property (IP) through, for instance, technology transfer agreements. Licensing of patented technology to generic companies that can produce cheaper versions of vaccines, for instance, at scale for developing countries, is key to ensuring access to pandemic products for the parts of the world that lack pharmaceutical production capacity. This much has been addressed in Article 11 of the INB's negotiating draft. However, these agreements are so far couched in non-binding language. If equity is contingent on recognising unequal power and economic dynamics between nations, then legal enforceability is key to ensuring that poorer nations are not dependent on developed nations' goodwill.

Can we have equity on 'mutually agreed terms'?

In the same vein, 'mutually agreed terms' have been hotly debated since Monday morning. James Love from Knowledge Ecology International has analysed the references in the text: 'in general, the phrase "mutually agreed terms" describes a relationship between industry and governments as equals bargaining with each other, and does not recognize the role of the state in regulating industry. And while such voluntary arrangements are useful and important, so too is the role of the state in regulating industry in the public interest, when necessary.' Mutually agreed terms would not cover situations in which compulsory measures are necessary to create equitable bargaining situations between, for example, developing country governments and industry, and ensure access to emergency products.

A number of Member States and civil society organisations therefore consider mandatory technology transfer during emergencies as critical. Where agreement cannot be reached between parties, binding obligations must exist to ensure that technology-holders actually follow through on their commitments. Many cited the example of Moderna pausing its plans to build an mRNA manufacturing facility in Kenya as an example of the vulnerability of voluntary terms in terms of ensuring sufficient access to technology in times of crisis.

Futureproofing or backtracking?

Nina Schwalbe (CEO, Spark Street Advisors), says that we need to look ahead to analyse what difference this accord could make to the global health landscape: 'If it maintains the status quo, then we have made no difference in better preparing the global health community for pandemics. Even if the content is improved, without an effective mechanism for accountability and compliance, there are no guarantees that it will be implemented.'

Arianna Schouten (Researcher at Knowledge Ecology International) considers that there has been a shrinking of the treaty's purpose since day 1, with gradual removal of specific terms that reflected concrete commitments to human rights and solidarity. 'Equity starts in the preamble, which should echo the treaty's purpose. On the other hand, we also need real actionable measures for ensuring equity, for instance through compelling provisions to ensure technology transfer. The March version of the so-called peace clause, for example, was much stronger, with clear references to States' rights to use the flexibilities in the TRIPS agreement without pressure or constraint from other Member States.' (see KEI's analysis of the peace clause [here](#)).

Achieving global health equity through human rights

The World Health Organization has a long history of addressing health issues from a rights perspective. The first official articulation of the human right to health was in 1946 in the WHO's preamble, which states that 'the enjoyment of the highest attainable level of health is a fundamental right of every human being'. At a minimum, the pandemic accord should not reinforce the existing power imbalances that were exposed during Covid-19. At best, the accord could revive the human rights discourse used during the HIV/AIDS epidemic to achieve free and universal access to antiretroviral treatment in the 1990s. At the time, legal disputes in Brazil and South Africa proved the justiciability of the right to health and how it can be used to hold governments accountable for their obligations to respect, protect and fulfil the right to health. International human rights law is therefore designed to limit abuses of power by both public and private actors, yet almost all references to human rights in the INB draft texts have been removed or weakened since its inception. This is possibly a possible reflection of the last four decades, during which corporate and commercial interests have gained power and the democratic institutions that are able to uphold human rights have been eroded.

Conclusion

Member States have just over a week left to create an actionable agreement that addresses not only the immediate and practical challenges of access to health technologies and tools, but also upholds fundamental principles of solidarity and human rights in the global response to pandemics. Civil society has not yet thrown in the towel on equity at the INB, but it is uncertain whether, within the remaining time, Member States can come to an agreement that could make a difference. In a stocktaking session on Friday 03rd, WHO Director General Tedros Adhanom Ghebreyesus called upon negotiators to recognise their responsibilities towards future generations, stating 'the biggest danger is indifference and inaction. This agreement is a piece of paper, but the measure of its worth will be whether it saves lives. Give yourselves a reason to be proud that you were part of this process, and give people a reason to be grateful for what you did in this room.'