Statement by Third World Network

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Agenda Item 12: Specialized International Access and Benefit-Sharing Instruments in the Context of Article 4, Paragraph 4, of the Nagoya Protocol

Thank you, Chair.

In some circumstances, especially when standard approaches to access and benefit sharing (ABS) are newly agreed inter-governmentally, specialized international instruments (SIIs) may aid implementation of the Nagoya Protocol. However, SIIs must faithfully implement the Convention's objective of fair and equitable benefit sharing, especially because non-compliant practices persist, including in the vaccine and pharmaceutical industries.

The necessity of SIIs being faithful to the Convention was underscored by the failure to enhance the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). At the CBD, we trust that all Parties seek to resolve the issue of digital sequence information (DSI) in good faith. But at the ITPGRFA, some developed countries sang a different tune and sought to trivialize DSI's importance, and to avoid attaching benefit-sharing value to its use. The result of this inconsistency was failure.

Growing interest in SIIs for human pathogens and their sequence information poses complex questions. On the one hand, the Pandemic Influenza Preparedness (PIP) Framework faithfully implements Nagoya obligations in a multilateral manner with standard terms and conditions. It has been successful, raising over US $200 million for public health to date, benefit sharing that has aided response to COVID-19. The PIP Framework may serve as a model for benefit sharing for other pathogens.

On the other hand, for many other human pathogens, including zoonoses, the current situation is not Nagoya compliant. Indeed, the old way of doing things continues to result in biopiracy. These so-called "existing practices" were not designed and do not function as benefit sharing arrangements in the sense of the Convention. Rather, they convey genetic resources to the pharmaceutical industry for free. That industry has not fairly and equitably shared benefits, as developing countries seeking affordable COVID vaccines and therapies will attest.

An SII that that does not faithfully uphold fairness and equity will benefit industry at the expense of biodiversity and people. Such fragmentation must be avoided. Yet there is reason to fear that some Parties seek an agreement in health that does not fully honor CBD obligations. Moreover, an SII without a very clear scope, best defined at the level of species, risks biodiversity slipping out from under the Nagoya Protocol.

The world's expertise in fair and equitable benefit sharing for biodiversity overwhelmingly resides in the community that works in the context of the CBD. As such, the Convention must actively and regularly review the development of instruments that claim to be SIIs, with a view to ensuring that they are faithful to the Convention.

The draft recommendations should state that *all* of the indicative criteria are applicable to any candidate SII. Candidate SIIs should stress fealty to the fairness and equity objective of the Convention, must address DSI in a manner consistent with Nagoya and apply to a very clearly defined set of genetic resources, best delimited by a species list. Finally, Parties cannot place this issue in limbo. Rather, review of putative SIIs and their consistency with the Convention should be regular, and the criteria should be addressed at COPMOP-4.

Thank you.