

## 4.1 Pandemic Influenza, Virus Sharing and Benefit Sharing

### Context of EB consideration of this item

The EB was invited to note the interim report ([http://apps.who.int/gb/ebwha/pdf\\_files/EB128/B128\\_4-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/EB128/B128_4-en.pdf); see cover note by DG and Annex which summarises the current thinking) of the Open-Ended Working Group of Member States on Pandemic Influenza Preparedness: Sharing of Influenza Viruses and Access to Vaccines and Other Benefits which met in December 2010. The Group plans to meet again in April and following this meeting a report will be submitted through the DG to the Sixty-fourth World Health Assembly, as decided in resolution WHA63.1.

### Background

The dispute has continued between WHO members regarding the sharing of benefits derived from viruses originating in developing nations since 2007, when Indonesia refused to provide avian flu samples to the WHO Global Influenza Surveillance Network [GISN] because it had been discovered that previous virus samples had been provided to commercial manufacturers who had then patented them and produced patented vaccine without sharing any of the benefit with the Indonesians (REF).

This had occurred despite existing WHO guidelines which explicitly ban WHO centres from passing viruses to third parties without the permission of the country of origin. Since 2007 the negotiations for a new set of guidelines has continued in the World Health Assemblies, almost every executive board meeting, an Interdisciplinary working group, an intergovernmental meeting and an open ended working group.

See Resolutions

- WHA63.1 ([http://apps.who.int/gb/ebwha/pdf\\_files/WHA63-REC1/WHA63\\_REC1-P2-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/WHA63-REC1/WHA63_REC1-P2-en.pdf));
- WHA62.10 ([http://apps.who.int/gb/ebwha/pdf\\_files/WHA62-REC1/WHA62\\_REC1-en-P2.pdf](http://apps.who.int/gb/ebwha/pdf_files/WHA62-REC1/WHA62_REC1-en-P2.pdf); page 15);
- WHA60.28 ([http://apps.who.int/gb/ebwha/pdf\\_files/WHASSA\\_WHA60-Rec1/E/reso-60-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/WHASSA_WHA60-Rec1/E/reso-60-en.pdf); page 102)
- Pandemic Influenza Preparedness (TWN Briefing Paper: [http://www.ghwatch.org/sites/www.ghwatch.org/files/Briefing\\_Note\\_Pandemic\\_Preparedness\\_for\\_PHM.doc](http://www.ghwatch.org/sites/www.ghwatch.org/files/Briefing_Note_Pandemic_Preparedness_for_PHM.doc)).

The main issue of contention is the extent of the intellectual property rights and obligations for benefit sharing that will be imposed on the WHO-linked centres and private sector and the implementation these limitations within standardised material transfer agreements [SMTAs].

### Report on the Executive board session

The mood was one of impatience among the secretariat DG and developed nations, with frequent appeals for expedience and references to the need for compromise. Japan and Canada were most vocal about the need for resolution, with the Dr Omi for Japan even suggesting that we settle for a system whereby the private sector makes a voluntary proportional donation of the profits raised to the country that has provided the virus stock.

Of the board members only Brazil, Morocco and Bangladesh explicitly endorsed benefit sharing and only India mentioned SMTAs yet failed to make clear the conditions they must contain.

Brazil stressed the inadequacy of donations as the basis of influenza preparedness for the developing countries since it will not 'broaden the base of vaccine production'. Timor L'Este spoke in favor of fair IP laws that support developing countries.

Brunei commented on the need for an investigation into the World's response to the last "H1N1 pandemic" given that it seemed "inappropriate" and "severe" in some cases. Indonesia made no comments.

The DG concluded by reiterating the need for settlement of this issue as soon as possible and encouraged all the delegates present to personally attend the 64th WHA to push for consensus. The session concluded with the report being noted without objection.

## Priority

This topic matters in terms of pandemic influenza preparedness. However, perhaps more importantly it matters as a small move to contain the reach of the Patent as an untrammelled regulatory tool. The notion of formal Benefit Sharing Agreements could create precedents for further limiting the reach of the patent.

## Contentious issues

Dispute settlement in SMTA

Standard text of SMTA

Transparent mechanism for benefit sharing

IP outcomes from virus sharing

## Active organisations

TWN is keen to prosecute this issue. They will take the lead and advise Global Secretariat of actions and resources.

## Implications for advocacy

The Working Group is proposing to resume from 11 to 15 April 2011. See Clause 8, page 3 of their interim report ([http://apps.who.int/gb/ebwha/pdf\\_files/EB128/B128\\_4-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/EB128/B128_4-en.pdf)) for full list of consultation work to be undertaken before the WHA.

PHM needs to highlight the problematic features of the current WHO influenza virus sharing system and to push for reform as mentioned above; reaching out to the media; writing to WHO and to the Co-Chairs of the negotiations highlighting key points of reform; lobbying northern and southern governments to take the right position in negotiations.

NGOs need to participate either through written submission or in person in the inter-sessional consultations.

The WG will hold informal consultations during the intersession, including through electronic means, which will be organized by the following Member States and on the following subject matter, respectively:

- Australia on the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity;

- Brazil on dispute resolution (SMTA inside the system); and
- India on definitions and use of terms.

Country PHM circles in these countries need to take an active interest in these discussions. There will be space for reporting country level action on the GHW website.

Other organizations with an interest in pandemic influenza preparedness and benefit sharing include: communicable disease networks, infectious diseases societies.

Indonesia was not prominent in the EB discussion. We need to encourage their follow through.

### **Advocacy opportunities**

11 to 15 April: Working Group on Benefit Sharing