

**Corporate Accountability International's Response to the WHO's Public Web Consultation  
on Engagement with Non-State Actors  
20 March 2013**

This response is made by Corporate Accountability International, a membership organization with a 35 year track record that protects human rights, public health and the environment from corporate abuse around the world. Corporate Accountability International is in official relations with the WHO, an accredited observer to the WHO Framework Convention on Tobacco Control (FCTC) and hold special observer status with the UN Economic and Social Council (ECOSOC). The organization is a founding member of the Network for Accountability of Tobacco Transnationals, which consists of more than 100 consumer, human rights, environmental, faith-based and corporate accountability organizations in 50 countries.

Corporate Accountability International welcomes the opportunity to provide a response to the consultation on the development of principles, policies and procedures related to the WHO's engagement with non-State actors, including nongovernmental organizations and private commercial entities. We applaud the WHO and its Executive Board for conducting this consultation.

This document sets out recommendations and a set of guiding principles for WHO and Member States to consider for inclusion in the development of its principles, policies and procedures relating to the engagement of non-State actors.

**Suggested Guiding Principles:**

We ask Member States to apply the safeguards outlined in Article 5.3 of the WHO Framework Convention on Tobacco Control – the WHO's first public health treaty – to the principles, policies and procedures to guide engagement with non-State actors and to reinforce protections of public health policies from the fundamental conflicts of interest of private commercial entities.

The WHO FCTC Article 5.3 sets a clear precedent for safeguarding against corporate conflicts of interest and prioritizing public health over commercial interests. The WHO and Member States should adapt this safeguard to its engagement with non-State actors, in particular those representing and furthering the interests of private commercial entities.

For example, the Guiding Principles could include the following language:

*“In setting and implementing public health policies Member States shall act to protect these policies from the fundamental conflict between the private commercial entities' interests and the interests of public health policy.”*

*Principle 1: There is a fundamental and irreconcilable conflict between private commercial entities' interests and public health policy interests.*

*Principle 2: WHO and Member States, when dealing with private commercial entities' or those working to further its interests, should be accountable and transparent.*

*Principle 3: WHO and Member States should require the private commercial entities and those working to further its interests to operate and act in a manner that is accountable and transparent.*

*Principle 4: Private commercial entities should not be granted incentives to establish or run their businesses.*

### **Recommendation 1: Address Fundamental Conflicts of Interest**

WHO Director General Dr. Margaret Chan has warned that many threats to health come from powerful corporations, driven by commercial interests. The profit-driven motive of commercial interests, like those of the tobacco, food, beverage, pharmaceutical and alcohol industries, run counter to the public health objectives of the WHO as well as civil society organizations working in the interest of public health. There is an inherent conflict of interest that exists when corporations whose products are detrimental to health seek to self-regulate or guide public health policies.

The principles, policies and procedures related to WHO's engagement with non-State actors, including nongovernmental organizations and private commercial entities, must emphasize the importance of governments taking the lead in policy setting and should not open the door for voluntary standards.

The principles, policies and procedures must also establish clear and enforceable standards to prevent corporate conflicts of interest. These measures should go beyond individual conflicts of interest, and first and foremost address institutional conflicts of interest.

We ask Member States to apply the safeguards outlined in Article 5.3 of the WHO Framework Convention on Tobacco Control – the WHO's first public health treaty – to the principles, policies and procedures to guide engagement with non-State actors and to reinforce protections of public health policies from fundamental conflicts of interest.

### **Recommendation 2: Emphasis on public interest non-governmental organizations**

Active involvement of public interest non-governmental organizations (NGOs) working to promote effective public health policies is a critical factor to facilitate the development, promotion and implementation of public health policies as well as to monitor private commercial entity activities that run counter to public health.

The final principles, policies and procedures must place an emphasis on public interest NGOs. Participation by these NGOs is essential in achieving the objectives of the WHO and its Member States. In addition, relationships established between NGOs and their government counterparts complement each others' work at the national and regional levels.

The WHO FCTC strongly establishes the principle that civil society participation is essential in achieving the objectives of the FCTC and its protocols while also explicitly excluding NGOs affiliated with the tobacco industry from involvement in tobacco control strategies. The FCTC also includes very strong language calling for the exclusion of the tobacco industry from its involvement in public health policymaking.

We ask the Member States to apply these safeguards to its engagement with non-State actors acting on behalf of private commercial entities, in particular those representing the tobacco, food, beverage, pharmaceutical and alcohol industries whose interests run counter to those of public health. These entities attempt to influence international policymaking and undermine progress on effective lifesaving measures, for example through charitable contributions and research funding, corporate partnerships, “corporate social responsibility” schemes, use of front groups to further their interests, lobbying, or monetary and in-kind gifts and services.

WHO and Member States must make a clear distinction between those organizations and institutions operating to further the interests of a private commercial entity (business-interest organizations) and public interest non-governmental organizations.

WHO and Member States should apply the safeguards outlined in the WHO FCTC Article 5.3 and its Guidelines for Implementation.

The WHO should never engage with those entities whose strategies and tactics are used to interfere with the setting and implementing of measures to protect public health and that operate with the express intention of subverting the role of governments and of WHO in developing and implementing public health policies.

### **Recommendation 3: Managing engagement with non-State actors**

Parties to the FCTC unanimously adopted Guidelines for Implementation of Article 5.3 in 2008. These guidelines are a milestone in the history of public health and should be used as precedents for managing the engagement of the WHO and Member States for the international regulation of other industries that profit at the expense of public health, the environment and human rights.

These guidelines could be applied in the following ways:

- 1) **Raise awareness about the role of private commercial entities engaging with the WHO.** All branches of government and the public need knowledge and awareness about past and present influence of and interference by the private commercial entities in setting and implementing public health policies.
  - a. WHO and Member States should inform and educate all branches of government and the public about the need to protect public health policies from commercial and vested interests and the strategies and tactics used to interfere with setting and implementing public health policies.

- b. WHO and Member States should raise awareness about the private commercial entities' use of individuals, front groups, affiliated organizations to act, openly or covertly, on their behalf.
  - 2) **Establish measures to limit interactions with private commercial entities and ensure the transparency of those interactions that occur.** Any interaction with the private commercial entities should be carried out by WHO and Member States in such a way as to avoid the creation of any perception of a real or potential partnership or cooperation resulting from or on account of such interaction.
    - a. Where interactions do occur, WHO and Member States should ensure that such interactions are conducted transparently. Whenever possible, interactions should be conducted in public, for example through public hearings, public notice of interactions, disclosure of public records of such interactions to the public.
    - b. WHO should not grant official relations status to private commercial entities.
  - 3) **Reject partnerships and agreements with private commercial entities.** Private commercial entities should not be a partner in any initiative linked to setting or implementing public health policies, given that its interests are in direct conflict with the goals of public health.
    - a. WHO should not grant official relations status to private commercial entities.
    - b. WHO and Member States should not accept, support or endorse partnerships as well as any voluntary arrangement with private commercial entities or any entity or person working to further its interests.
    - c. WHO and Member States should not accept, support or endorse private commercial entity organizing, promoting, participating in, or performing youth, public education or any initiatives that are directly or indirectly related to public health policies.
    - d. WHO and Member States should not accept, support or endorse any voluntary code of conduct or instrument drafted by the private commercial entities.
    - e. WHO and Member States should not accept, support or endorse any offer for assistance or proposed public health legislation or policy drafted by or in collaboration with private commercial entities.
  - 4) **Avoid conflicts of interest for government officials and employees.** Clear rules regarding conflicts of interest for government officials and employees are important means for protecting such policies from interference by private commercial entities. Payments, gifts and services, monetary or in-kind, and research funding offered by the private commercial entities can create conflicts of interest.
  - 5) **Require that information provided by the private commercial entities be transparent and accurate.** To take effective measures preventing interference of the private commercial entities with public health policies, WHO and Member States need information about their activities and practices, thus ensuring that the private commercial entities operate in a transparent manner.

#### **Recommendation 4: Emphasize Member States are the key stakeholders in setting policy**

Member States are the key stakeholders in setting policy. This is particularly important considering the ineffectiveness of the private commercial entities' self-regulatory and voluntary approaches. Statutory regulation is the only effective means of implementing many of the recommendations by the WHO.

One critical challenge and risk associated with the WHO's engagement with non-State actors is the move by private commercial entities to only advocate for voluntary corporate agreements. Such agreements have serious limitations that render them ineffective in addressing public health concerns and are limited in terms of the rights they include and the sectors they cover. In addition, many corporations choose not to join any voluntary initiative, which limits both the scope and effectiveness of corporate self-regulation.

For example, in the United States, several independent investigations determined that the voluntary Children's Food and Beverage Advertising Initiative has been ineffective and that a majority of participating transnational food corporations continues to market foods high in fat, sugar and salt directly to children. For example, 88 percent of the products that McDonald's deemed appropriate to market to children under a voluntary marketing scheme did not meet third-party nutrition standards.

#### **Conclusion:**

In conclusion, Corporate Accountability International asks the WHO and Member States to adopt a set of guiding principles that safeguards against corporate conflicts of interest and prioritizes public health over private commercial interests. Corporate Accountability International has four specific recommendations for WHO and Member States in engaging with non-State actors:

1. Address fundamental conflicts of interest (for example, use the precedents of Article 5.3 and its implementation guidelines of the WHO FCTC);
2. Emphasize interaction with public interest non-governmental organizations;
3. Manage engagement with non-State actors (for example, reject partnerships with and financial contributions from private commercial entities); and
4. Emphasize Member States are the key stakeholders in setting and implementing public health policies.

Corporate Accountability International once again thanks the WHO and Member States for the opportunity to submit these comments and is available to support the further development of the principles, policies and procedures to guide engagement with non-State actors.

Contact:

Gigi Kellett, Managing Campaigns Director, Corporate Accountability International  
[gkellett@stopcorporateabuse.org](mailto:gkellett@stopcorporateabuse.org), +1 617-695-2525