

24 March 2013

Responses to the 'Public web consultation on WHO's engagement with non-State actors'

The signatories to these comments are members of the Democratizing Global Health Coalition on the WHO Reform (DGH), a coalition of public-interest NGOs that closely follows the WHO reform to ensure that the leading, coordinating and norm-setting role of the WHO as stipulated in its Constitution, is not compromised¹. DGH has engaged with WHO on the reform process since the beginning seeking to ensure that through the reform, WHO will significantly improve its work for the **attainment by all peoples of the highest possible level of health**. (WHO Constitution, Art.1).

While we welcome the possibility to be consulted on the important issue of the principles and policies for interaction with external actors, we find that raising questions on a generic 'non-State' actors policy makes it difficult to give meaningful responses, given the different nature of the groups that fall under such a broad category. It disregards distinctions between public interest civil society actors and private commercial entities already made by the WHA. We also find that the questionnaire does not take into account previous consultations on the engagement of WHO with NGOs, that took place in the second half of 2012. We are worried that the clear and cogent issues paper² published by WHO in October 2012 has got lost as a key reference for this process.

Finally, we also regret the limited time at our disposal (19 days) for responding to this questionnaire. Answers to these questions require extensive and democratic discussions among the NGO community and with WHO and Member States. Therefore, we hope that this will not be the last opportunity to be consulted on such an important debate. We would appreciate the opportunity to be able to provide WHO with more extensive responses in future.

The order of the responses follows that of the questionnaire. Repetitions are difficult to avoid given the overlapping nature of the questions.

Signatories (Members of the Democratizing Global Health Coalition on Who Reform):

Health Innovation in Practice (HIP)
International Baby Food Action Network (IBFAN)
Medicus Mundi International Network (MMI)
NGO Forum for Health
Third World Network (TWN)
WEMOS
World Social Forum on Health and Social Security

¹ Core Statement of the Democratizing Global Health Coalition on WHO Reform, http://www.medicusmundi.org/en/topics/pnfp-sector-and-global-health-initiatives/who-reform/dgh_core-statement_final.pdf

² Consultation on WHO's engagement with NGOs: Issues to consider in the formulation of a policy. http://www.who.int/about/who_reform/governance/who_reform_consultation_who_ngo_engagement_issues_paper.pdf

1. The scope of non-State actors

WHO's Member States have stated in recent deliberations on WHO Reform that a set of overarching principles need to be established which can be applicable to WHO's engagement with "non-State actors." Member States have acknowledged the strategic importance for WHO to strengthen engagement with non-State actors to leverage mutually beneficial cooperation at global, regional and country levels with a view towards improved public health outcomes. It is also recognized that non-State actors play a critical role in supporting WHO's work to fulfil its constitutional mandate.

The term "non-State actors", however, is not reflected in the WHO Constitution, and could potentially encompass a wide array of entities. For example, "non-State actors" may include not only civil society and private commercial entities, but also philanthropic foundations, partnerships, faith-based organizations, social movements, the general public, individuals, etc., resulting in challenges concerning management of WHO's engagement with non-State actors.

QUESTION: How should WHO best address the challenge of ensuring that its principles and policies of engagement with "non-State actors" are relevant and applicable to the wide range of entities that may fall therein? How should WHO best address the challenge of developing policies and procedures for engagement with non-State actors, given the range of diversity within this sector? Are there entities with which WHO should never engage?

ANSWER to Q1:

We welcome the proposal of setting overarching principles that will guide WHO in its relations with non-State actors, such as the independence and integrity of the organization, protecting the organization from conflicts of interest and ensuring a MS driven organization.

However we are concerned that aggregating all actors outside of governments under the generic umbrella of non-State actors may be a step backwards, leading to blurring of lines, fudging of issues involved, and is rather counterproductive for the development of clear policy for NGOs and for the private commercial entities.

This is not in line with the decision 65(9) of the 65th WHA³ which is explicit in requesting the Director-General:

(a) to present a draft policy paper on WHO's engagement with **nongovernmental organizations** to the Executive Board at its 132nd session in January 2013;

(b) to present a draft policy paper on the relationships with **private commercial entities** to the Executive Board at its 133rd session in May 2013;

As a first step in addressing the challenge of 'developing policies and procedures for engagement with non-State actors, given the range of diversity within this sector', WHO must ensure that clear distinctions are made within this range of actors and the two policies called for by the WHA are developed as a priority. While overarching principles should govern all interaction with non-state actors, separate policies are needed to establish the fundamental difference between civil society organisations and entities that represent or are linked to commercial entities.

The questionnaire fails to elaborate the different levels of engagement that are envisaged by the Secretariat with regard to the different non-state actors, making it difficult to provide precise responses.

³ A65/DIV/3 http://apps.who.int/gb/ebwha/pdf_files/WHA65/A65_DIV3-en.pdf

Generally, however, non-State actors, be it commercial entities or other actors who are linked to the production of goods and services are likely to have a vested interest in the outcomes of WHO processes as their commercial interest may be affected by these outcomes. Therefore engagement with these actors poses a major risk of conflicts of interest, and puts into question the independence and integrity of WHO. Thus, collaboration with these actors should be subject to a rigorous conflict of interest risk assessment. Where there are real or perceived risks of conflict of interest, WHO should not engage with these actors.

However, it is difficult to imagine such a risk assessment without WHO having a clear conflict of interest policy with assessment criteria based on the principles of integrity, independence, transparency, protection of WHO's mandate etc. Such policy with criteria will help identify actors with whom WHO should not engage at all (in addition to the obvious suspects such as tobacco industry and armaments industry and civil society groups linked to these interests- already ruled out by EB 107/20).

We would also emphasize that as a matter of principle it is of utmost importance that necessary measures are taken to ensure that WHO's norm-setting/standard-setting exercises are not influenced by commercial entities or other non-state actors linked to such entities as market interests/links can conflict with health outcomes.

2. The scope of different groups within non-State actors

Even within a particular non-State actor constituency, there exist a diverse range of entities linked to various interests, commercial or otherwise. For example, many nongovernmental organizations that have relevance in the health sphere can be categorized in different groupings (e.g. professional associations; trade or industry associations; disease-specific nongovernmental organizations; development nongovernmental organizations; patient and consumer group nongovernmental organizations, faith-based organizations, etc.)

Currently, no specific differentiation of groups is made amongst NGOs or any other non-State actor grouping with which WHO engages. In addition, no further distinction is made among the numerous constituencies that comprise this sector.

QUESTION: How should WHO best address the challenge of developing policies and procedures for engagement with non-State actors, given the range of diversity within this sector? Are there entities with which WHO should never engage?

ANSWER to Q2:

Again, it is difficult to respond to this question given the very different nature of actors grouped together under this term (see answer above).

The first distinction that needs to be made is that between NGOs and the private for profit sector, which corresponds with the request of the governing bodies in the 65th WHA decision that asked the DG to prepare two separate policies for NGOs and the private sector (see above).

This decision identifies two categories, NGOs and private commercial entities, and calls for a specific policy for each thus recognizing that the purpose of WHO engagement with these actors is completely different, given their distinct and different nature and interests. Therefore, while an overarching policy framework with clear principles that shall apply to all non-actors under its scope may be useful, it should not replace very distinct policies for each category of actors.

We suggest that WHO should distinguish between the groups identified below. This distinction should also determine the way that conflicts of interest issues are dealt with and how WHO should interact with these groups. .

(1) Nongovernmental organizations

WHO should adopt a sufficiently broad and clear concept of nongovernmental organization to adequately reflect the range of public-interest civil society organisations that support its mission worldwide. In particular, it is important that the scope of the draft policy includes social movements and horizontal networks.

It is imperative to differentiate between NGOs with business interests/links and those without such interests and links and to appropriately manage conflicts of interest that can have negative impact on health outcomes. Only organizations that are non-state, not-for-profit, voluntary organizations formed by people within the social sphere of civil society which do not represent commercial interest, and are NOT predominantly dependent on commercial interests (financially or otherwise) should be considered as NGOs

Some more specific suggestions on the scope of this group:

- (a) Organizations that represent commercial interests or that are **business-interest front groups or business-interest NGOs (BINGOs)** should not be categorized as NGOs. These NGOs should be regulated by the policy concerning private commercial entities.
- (b) Organizations that are **linked to commercial interests** (e.g. by way of their governing structures – commercial entity or their personnel represented on these bodies, members, operations or partnerships, or predominantly reliance on private sector financing), pose significant risks to WHO. Criteria should be developed to identify organisations that have inappropriate and/or close links to commercial interests and NGOs should be consulted on the development of such criteria. If these links are deemed inappropriate, interactions with such organisations may need to be governed by the policy on private commercial entities, with all necessary safeguards applying.

For example: some 'hybrid'⁴ bodies such as the Global Alliance for Improved Nutrition (GAIN), work to further the ends of the business sector, by changing the regulatory framework to facilitate new markets – even though they may be registered as an NGO or charitable foundation, with funding channeled through foundations and other sources. The EB Committee on NGOs noted in January 2013 that GAIN provided some funding to WHO and urged great care in considering WHO relations with organizations that fund WHO. GAIN receives funds from the Gates foundation as well as directly from companies. In view of such concerns the 132nd WHO Executive Board decided *“to postpone consideration of the application for admission into official relations from The Global Alliance for Improved Nutrition to the Executive Board’s 134th session, and requested: information concerning the nature and extent of the Alliance’s links with the global food industry, and the position of the Alliance with regard to its support and advocacy of WHO’s nutrition policies, including infant feeding and marketing of complementary foods.”*

⁴ The term 'Hybrid' is used here to explain that even though GAIN is officially registered as a charitable foundation under the Swiss law (http://www.gainhealth.org/sites/www.gainhealth.org/files/Statutes%20FR%20and%20ENG_Approved2012.pdf) its Board of Directors is comprised of donor, UN, development, research, business and civil society communities. GAIN promotes public-private partnerships, involving more than 600 companies. For more information please see IBFAN press release: <http://info.babymilkaction.org/pressrelease/pressrelease31jan13>

This clear message from Member States is a good example of the vigilance that is and will be needed in dealing with such hybrid bodies. However it also clearly illustrates the challenge of implementing existing WHO policies: the EB107/20 clearly states “WHO should avoid indirect collaboration (particularly if arranged by a third party acting as an intermediary between WHO and a commercial enterprise) — the case of GAIN, can be well argued, falls into this category.

- (c) We encourage WHO to **further differentiate NGOs according to the different constituencies**. This can lead to sub-categories such as: professional associations, disease specific NGOs, development NGOs, humanitarian NGOs, patient group NGOs, consumer group NGOs, scientific or academic NGOs, health-related NGOs, student group NGOs, women’s group NGOs, social movements, etc. Examples of such distinction can be found in other organisations (CFS, UNAIDS, etc.). However such categorization also need to be tailored to the types of NGOs that engage with WHO. WHO may even consider reviewing this categorization periodically or whenever necessary.

(2) Private commercial entities

This category should include all business corporations and enterprises, as well as business associations, federations and nongovernmental organisations set up by companies, and commercial media. As noted above, it should also include NGOs with links to commercial interest.

The major characteristic for this category is the high potential for conflicts of interest situations arising from the engagement of this group of actors with WHO given *“that WHO’s activities affect the commercial sector in broader ways, through for example, its public health guidance, its recommendations on regulatory standards, or other work that might influence product costs, market demand, or profitability of specific goods and services.”*⁵ Therefore, WHO must consider the potential harm that the interaction with these private commercial entities can cause, resulting in the violation of some of its overarching principles such as the independence and integrity of the organization, safeguarding its reputation, values and impartiality and the objectivity of the scientific judgment of the organisation and for creating conflicts of interest. WHO should take maximum precautionary measures in order to avoid and/or manage conflicts of interest (see question 6 for more information), and should maintain a constant vigilance so that those conflicts of interest that have been accepted do not result in unexpected harm.

Some further considerations should apply to this category:

- (a) Business associations or business lobby front groups (commonly called as BINGOs) should fall under the scope of this category, and not as is the case currently to be guided by the policy on NGOs. Other NGOs with inappropriate commercial links may also be guided by the policy on private commercial entities, with all the necessary safeguards on conflicts of interest applying, according to criteria to determine whether the links are too close and inappropriate.
- (b) This policy must not allow individual companies to participate in the discussion of the governing bodies (as observers) or to participate in any norm/standard setting exercises or policy-making processes of WHO.
- (c) Ideally WHO should not engage with actors in this category. Having said that, at the very least, necessary measures should be taken to ensure that WHO’s norm-setting/standard-setting processes are not influenced by commercial entities or other non-state actors linked to such

⁵ Para 6: EB 107/20, <http://apps.who.int/iris/bitstream/10665/78660/1/ee20.pdf>

entities as market interests/links can conflict with health outcomes. WHO's collaboration with such entities must be based on rigorous assessment of conflicts of interest. Furthermore, financing should not be accepted from commercial enterprises for activities leading to production of WHO guidelines or recommendations as per EB 107/20. This position is currently supported by the 2013 Lancet Series on NCDs in which Moodie et.al. concluded that "*unhealthy commodity industries should have no role in the formation of national or international NCD policy*"⁶.

(3) Philanthropic organisations

We agree with the need to regulate the way WHO engages with this category of actors. This is in line with the deliberations of the 130th session of the Executive Board, which, according to the Chairman's summary, envisaged discussions during the 2012 World Health Assembly on development of a separate framework policy on this category of actions. On this, there are two valid options.

- (a) WHO could develop a **separate policy to guide WHO's interactions with not-for-profit philanthropic organizations**. Such a policy must be developed to ensure transparency with regard to WHO's interactions with such organizations, and adequate safeguard mechanisms against conflicts of interests. WHO Secretariat should also establish criteria to identify these organizations, so as to ensure that philanthropic organizations, falling within the category, are organizations that have aims and purposes consistent with WHO's Constitution and the policies of the Organization and are not driven by commercial or other interests that could conflict with WHO's public health mandate.
- (b) Alternatively WHO could **include philanthropic organisations in the scope of the policy on the private commercial entities**. The Advisory Board of the UN Committee on Food Security (CFS) may provide a useful example in this direction. The rationale behind such an alternative lies in the fact that often philanthropic organisations are not at arms length from their founding industry and thus may be driven by commercial or other interests that could conflict with WHO's public health mandate as already recognized in the EB 107/20 guidelines. Also these foundations often are donors of the WHO and thus they have a great power in influencing WHO's decisions through their financial leverage. Therefore, in order to protect its independence from such influence, WHO must take all possible precautionary measures when dealing with this group.

With regard to their 'engagement' with WHO, necessary measures should be taken to ensure that WHO's norm-setting/standard-setting exercises are not influenced by actors falling within this category. WHO's collaboration with such entities must be based on rigorous assessment of conflicts of interest.

General note on the abovementioned categories

WHO should establish through transparent processes and clear criteria to identify organizations that would fall in each of the three categories mentioned above.

To facilitate transparency and public scrutiny, it is important for WHO to make publicly available information on all organizations (commercially linked or otherwise) interacting with WHO. Information that should be made available includes: the mandate, governing structure (organization chart if available) of the organization, such as the charter/statutes/constitution/by-laws or articles of association, composition of its governing board members, financial assistance received from the

⁶ Profits and pandemics: prevention of harmful effects of tobacco, alcohol, and ultra-processed food and drink industries. Rob Moodie, David Stuckler, et al., *The Lancet* - 23 February 2013 (Vol. 381, Issue 9867, Pages 670-679)

industry, and the extent of industry contributions. The WHO Secretariat should also initiate a regular information collection procedures to periodically update the information provided.

WHO's engagement with the abovementioned non-state actors must be underpinned by a strong conflict of interest policy. This is all the more required where the interaction is with private commercial entities and philanthropic organizations. The commercial interests of these organizations could compromise WHO's public health mandate and bring about severe consequences for the implementation of Health for All. It has been noted elsewhere in this response that WHO requires a comprehensive conflict of interest policy to govern all its activities and interactions.

(4) Partnerships

For those partnerships that have WHO as a partner, the 2010 WHO Policy on Partnerships needs to be enforced. It also needs to be periodically reviewed and revised based on lessons learned. Some partnerships have governments as their members, thus it would not be correct to classify them as non-State actors.

In any case, we believe that in the case of interactions of WHO with partnerships, be it public-private or not, one basic rule should apply in relation to conflicts of interest:

- (a) Given their different nature and membership, partnerships should be assessed according to the nature of their partner members. Assessment and consideration of conflicts of interest should take into account the composition of the partnership. If one of the partners is a producer or is an NGO with risky commercial links, WHO should take all precautionary measures when dealing with partnership, as when dealing with that particular entity. The rule of the 'weakest link' should apply: *a chain is only as good as its weakest link*.
- (b) If the conflict of interest, following a risk-benefit analysis is not acceptable, it should be avoided, and thus WHO should not engage or should discontinue engagement with such actors. In addition all forms of engagement with actors within this category should be transparent and made public and offer the possibility for public scrutiny and oversight, e.g. through the possibility for the public to communicate information that may shed light to the decision of WHO to pursue collaboration.

3. Overarching principles for engagement

WHO's Member States have requested that overarching principles for WHO's engagement with non-State actors be submitted for the consideration of the Executive Board at its 133rd session in May 2013. The following represent an initial formulation of principles in this regard, and are in line with principles articulated by Member States during the 65th World Health Assembly (Decision WHA65(9)) to guide the development of policies of engagement with private commercial entities and nongovernmental organizations:

- WHO is an intergovernmental organization, and WHO's decision making supremacy lies with WHO's governing bodies;
- WHO is a science and evidence-based organization espousing a public health approach, and the development of norms, standards, policies and strategies must continue to be based on the systematic use of evidence and protected from influence by any form of vested interest;
- transparency of WHO's engagement with external stakeholders is paramount; and
- conflicts of interest must be adequately managed.

QUESTION: Do the principles above encompass all elements that are needed to articulate overarching principles to guide WHO's interaction with non-State actors? Are there others?

ANSWER to Q3:

We would like to add one more principle: *WHO must uphold its constitutional mandate that is "the attainment by all peoples of the highest possible level of health"*.

We would amend the second principle to read: *"WHO is a science and evidence-based organization espousing a public health approach, and the development of norms, standards, policies and strategies must continue to be based on the systematic use of evidence and protected from the influence of ~~by~~ any form of commercial ~~vested~~ interest"*

We would rephrase the 4th principle to read: *"The primacy of public interest and the avoidance and/or management of conflicts of interest is imperative."*

The reason being that it is the public interest constitutional mandate of WHO that one is defending when protecting it from conflicts of interest.

4. Modalities of engagement

a) General

WHO currently engages with non-State actors in a host of ways across all levels (country, regional, and HQ) of the Organization. For example, WHO may engage with non-State actors in large epidemics and civil strife and other humanitarian action, in the context of development of global strategies or plans of action, or in relation to transmission of advocacy efforts and information to country level. The current manner by which WHO's engagement of non-State actors is governed, however, is not well-defined, and is in many ways ad hoc.

QUESTION: How can WHO best ensure that its principles and policies of engagement with non-State actors are relevant and applicable to the wide range of activities undertaken by WHO? What mechanisms should WHO develop to more systematically manage its engagement with non-State actors?

ANSWER to Q4/a:

We appreciate that WHO is looking for a systematic approach and understand that it also implies 'coherent' approach'.

As highlighted above, one important mechanism is the development of a comprehensive organization-wide policy for adequately addressing conflicts of interest. Such policy will facilitate development of the abovementioned policies and clarify issues around individual conflicts of interest, institutional ones and the structural determinants for both categories. It would adopt clear criteria for identification of conflicts of interest and how to address them.

We believe it is also important for WHO to strengthen collaboration with NGOs as defined above. The policy on WHO's engagement with NGOs should govern WHO's interactions and **collaboration with NGOs**, in order to provide clear guidance to WHO staff, its member states and to NGOs on how to encourage and secure meaningful participation and collaboration. As noted in the WHO Review

Report “WHO’s interactions with Civil Society and Nongovernmental Organizations”⁷, collaboration must be on the basis of respecting the autonomy, integrity, limits and differences of the other and on clearly agreed responsibilities by the parties involved when agreeing to a common plan of action, identification of resources and strategies for implementation and monitoring. Collaboration between NGOs and the WHO should aim at advancing the objectives and policies of WHO. We do not see a problem with WHO maintaining its three year collaboration plan, but this should not be a condition for accreditation.

Managing engagement with NGOs.

We are of the view that there is mutual benefit in a strengthened engagement with public-interest NGOs and this should be reflected in the draft NGO policy. Toward this end, we propose the following:

(a) Revive the *Civil Society Initiative (CSI)*.

In 2001, in recognition of the growing importance of civil society, Dr. Gro Harlem Brundtland, then Director-General of WHO, established the Civil Society Initiative to, among others, identify and develop propositions for more effective and useful interfaces and relationships between civil society and WHO. However since its launch little has emerged from the initiative and in fact over the years WHO-NGO engagement has been in decline.

We urge the Director-General to revive and re-launch the CSI, with the specific aim to create and/or improve mechanisms for NGOs to interact promptly and effectively with WHO on the full range of health matters as well as to strengthen capacities within WHO for strengthened engagement with NGOs. The mechanisms should also empower NGOs to play a more active role in providing input to WHO on health matters including on issues pertaining to WHO partnerships as well as to promote and implement public health matters advocated by WHO internationally, nationally and regionally.

(b) *A Civil Society Mechanism*

A mechanism that could be used to strengthen the engagement and contribution of NGOs in WHO’s work is a civil society mechanism, following the example of the International Food Security and Nutrition Civil Society Mechanism (CSM). As part of the reform of the Committee on World Food Security (CFS) in 2009, CSOs/NGOs and their networks were invited to establish autonomously a global mechanism for food security and nutrition, which would function as a facilitating body for CSO/NGOs consultation and participation in the CFS processes. The CSM was launched in 2010 and represents an inclusive and open space in which CSOs worldwide share information and participate in policy debates and processes in relation to the CFS.

Its purpose is to facilitate civil society participation in agriculture, food security and nutrition policy development at national, regional and global levels in the context of the Committee on World Food Security (CFS)⁸. CSOs within this mechanism have organized themselves around 11 constituency groups (see paragraph 1(b) above) and 17 sub-regional groups. Members of the CSM are able to contribute to political processes relating to the CFS and its mechanisms at the global and regional levels through sharing of experiences, analysis and positions and through participation in policy working groups.

WHO should study the benefits of promoting and supporting a similar mechanism for NGOs.

⁷ WHO/CSI/2002/WP6

⁸ International Food Security and Nutrition Civil Society Mechanism, <http://www.csm4cfs.org/>

We call upon the DG to undertake formal consultations with NGOs to discuss the proposed suggestions as well as other options to strengthen engagement with NGOs and allow for its effective management.

b) Context-specific

WHO's current engagement with a particular non-State actor may be different depending on the context of the activity or the nature of the engagement. For example, a particular non-State actor may engage with WHO in one context in relation to a particular activity or function, but may be excluded from engaging altogether in relation to a different activity or function. Similarly, different non-State actors (depending on their nature) may be treated differently in the same context. There is currently no consistent or predictable system or mechanism by which these assessments or decisions are made.

QUESTION: How should WHO best address the issue of engaging with non-State actors in different contexts, and in view of different modalities of engagement? How can WHO best ensure consistency and predictability in engagement of non-State actors?

ANSWER to Q4/b:

Our comments on this question have been addressed elsewhere in this document.

c) Engagement with WHO's governance processes

WHO's engagement with non-State actors in the context of WHO's governance processes (e.g. WHO's governing bodies or processes established by WHO's governing bodies), or consultations towards the development of health policies, is an important modality of engagement which supports an effective, collective response to national and global health challenges, in addition to adding an important dimension to WHO's role in global health governance.

QUESTION: What methods should WHO employ to strengthen and widen engagement with non-State actors in relation to WHO's governance processes or towards the development of health policies and strategies? What are the factors that WHO should take into consideration when defining the parameters of this engagement?

ANSWER to Q4/c:

Engagement is a function of the actor that the organisation will be interacting with. However the questionnaire fails to identify the different types of engagement that are envisaged for the different non-State actors. As a result it is difficult to give more precise responses particularly with regard to the policy on private commercial entities. Below some points are raised with regard to the different categories of non-state actors.

As regards **the private commercial entities**, we are of the view that ideally WHO should not engage with organizations that represent commercial entities or that have close links with such entities. Having said that, at the very least necessary measures should be taken to ensure that WHO's norm-setting/standard-setting processes are not influenced by commercial entities as market interests/links can conflict with health outcomes. Further, WHO's collaboration with such entities must be based on rigorous assessment of conflicts of interest. Entities that fall within the scope of "private commercial entities" should be distinguished from NGOs (as defined above) by use of different coloured badges.

The same would also apply to **philanthropic organizations**.

With regards to NGOs engagement with WHO's governance processes it is proposed that in the draft NGO policy paper that WHO distinguish between a *NGO Accreditation Policy* and a *NGO Collaboration Policy*.

The **NGO Accreditation Policy** should contain procedures pertaining to NGOs attendance at WHO meetings and privileges available to such NGOs. As noted by the Review report, "In contrast to the current "official relations" system, accreditation would not be conditional on working relations with the Secretariat."⁹

The accreditation policy should enable NGOs including "social movements and horizontal networks" that have aims and purposes consistent with the WHO's Constitution and that are in conformity with the policies of the Organization, to participate in governing body and other meetings convened by WHO as observers without voting rights. Under the policy, accredited NGOs should have the right to appoint representatives to participate in WHO meetings and the freedom to make statements without prior scrutiny and censorship by the WHO Secretariat as well as access to privileges listed in Section 6.1 and 6.2 of the 1987 Principles.

Accredited NGOs should also have the right to organize side events during WHO meetings, particularly during the World Health Assembly, as well as to a fully equipped and well-positioned room for internal meetings and briefings during WHO meetings. In this regard the WHO Secretariat should have the responsibility to ensure that appropriate and adequate arrangements are made.

The **NGO Collaboration policy** would pertain to and govern WHO Secretariat's interactions and collaboration with NGOs. The purpose of such policy would be to provide clear guidance to WHO staff, its member states and to CSOs on how to encourage and secure meaningful participation and collaboration of CSOs with WHO. As noted in the Review report, collaboration must be on the basis of respecting the autonomy, integrity, limits and differences of the other and on clearly agreed responsibilities by the parties involved when agreeing to common plan of action, identification of resources and strategies for implementation and monitoring. Collaboration between NGO and the WHO should aim at advancing the objectives and policies of WHO. It is also very important that the NGO collaboration policy establishes appropriate safeguards to eliminate all risks of real or perceived conflicts of interests.

d) Strengthening country-level engagement

Given the vital role played by non-State actors in the implementation of health policies and strategies at country-level, it is important that WHO strengthen engagement with non-State actors and encourage initiatives to bring such entities together with Member States to collaborate on WHO's strategic priorities. In particular, action by non-State actors in the context of WHO's technical work at country level needs to be adequately reflected in, and accommodated by, any collaborative framework concerning engagement with non-State actors.

QUESTION: What actions should WHO explore to strengthen engagement with non-State actors at country-level? What are the factors that WHO should take into consideration when defining the parameters of this engagement?

ANSWER to Q/d:

⁹ WHO/CSI/2002/WP6

Strengthening engagement with non-State actors at country level is a critical issue and should not be restricted to WHO's technical work. On the contrary, this question opens a crucial dimension of the whole WHO reform process:

We refer to the overarching principles for WHO engagement with non-State actors (see question 3), mainly to the principle that “*WHO is an intergovernmental organization, and WHO's decision making supremacy lies with WHO's governing bodies*”. In WHO governing body meetings, this is often translated by the WHO DG and by delegates of member states into the simple statement that “WHO belongs to the member states”.

This is incontestable, but by whom are these member states represented? Who are the delegates at WHO meetings? Who appoints them and for whom do they speak? Is it only the Government or are they in consultation with non-State actors?

We appreciate the efforts to improve the skills of the WHO delegates. We have seen some considerable improvements in how delegates act at WHO meetings, e.g. in the recent session of the Executive Board. But it is not only about skills, it is also about legitimacy: There is an urgent need for another effort: to improve **global health democracy** as a core element of the legitimacy of WHO as truly intergovernmental body.

We strongly recommend to WHO to urge its owners, the member states, to address the whole range of issues regarding engagement with non-state actors (the full list of items of this questionnaire) at country level: All WHO member states need to define policies and instruments for engaging non-State actors not only in their domestic health policies, but also in the making of their positions on global (health) issues.

There is no blueprint for this process and the resulting instruments; modalities and solutions need to be rooted in the political culture and the existing institutional settings of every country. Resulting policies and instruments for policy dialogue (such as hearings, national assemblies, a structured dialogue with parliament commissions, etc.) should be made transparent, shared with other countries at a regional and global level in order to foster best practices and mutual learning.

On the other hand, such a process of democratizing global health policy needs support and leadership by WHO both at global and regional level and should be integrated in their structured dialogue with member states.

We are advocating for a WHO in which the normative processes for global health policy are led by countries, based on coherent positions resulting from a democratic political process at the domestic level. True global health democracy starts at home. There is not shortcut or quick fix for it at a global level.

5. Challenges and risks arising from engagement

A number of challenges exist for WHO when engaging with non-State actors. For example, engaging with a non-State actor may result in a reputational risk to WHO, may present challenges in managing conflicts of interest arising from a particular engagement, or may raise challenges in ensuring full transparency of the engagement. Similarly, certain challenges may be present for non-State actors when engaging WHO.

QUESTION: What are the different challenges and risks that may be associated with WHO's engagement with non-State actors, both from the perspective of WHO and that of the non-State actor?

ANSWER to Q5:

In our view the greatest risk to WHO is the failure to develop appropriate mechanisms to boldly deal with the matter of conflict of interest. Failure to address this issue is likely to further jeopardise the legitimacy and credibility of WHO as an institution that upholds public interest.

6. Management of conflicts of interest

It is recognized that all non-State actors with which WHO engages have interests which may or may not be regarded as a conflict of interest. One of the aims in promoting a more streamlined and systematic framework for engagement is to effectively manage such conflicts of interest.

It is also recognized that WHO should conduct the necessary due diligence to protect itself from such potential risk and manage any potential conflict of interest concerning any direct or indirect engagement in actions contrary to the objectives of WHO, jeopardizing the independence and objectivity of WHO's normative and standard setting function, or favouring the commercial interest of the partner or the ones of third parties.

QUESTION: Given the spectrum of entities that comprise “non-State actors”, and in view of the complexities that arise when engaging with these actors both in the context of different activities undertaken by WHO and towards the development of health policies and strategies, how should WHO best ensure that vested interests are adequately addressed and managed?

ANSWER to Q6:

The conflict of interest that poses the greatest risk to WHO is related to commercial and for-profit interests. Therefore this should be at the centre of WHO's concerns on how to deal with conflicts of interest. From our experience, the argument that everyone has a vested interest is often used by industry to detract attention from the real issue at stake which is the conflict between public health interest and commercial interests.

Non-State actors that are linked to the *producers* of goods and services (such as medicines, vaccines, unhealthy goods such as tobacco, alcohol, junk foods, etc.) have a vested commercial interest in the outcome of WHO processes that can influence the sale of their products. These actors are in an obvious situation of conflict of interest. This poses a major risk to the independence and integrity of WHO.

As stated previously, we are of the view that WHO should develop **a comprehensive conflicts of interest** policy which tackles both individual and institutional conflicts of interest, with adequate measures and mechanisms for its implementation. These tools will ensure that WHO has the means to avoid inadmissible conflicts of interest and appropriately manage those that cannot be avoided.

Situations of conflict of interest are problematic because they risk causing harm and it is this risk that entails the need for effective safeguards. Thus situations of conflicts of interest need to be assessed, weighing up the risks posed by the activity or the relationship and its potential social value, and linking this to a clear ethical framework. Thus, the relationship/activity should be avoided or stopped if the conflict of interest poses too big of a risk, or it can continue if the risk posed is considered lower than the potential benefit and in this case the conflict of interests should be appropriately managed and overseen.

We think that these complex issues should be addressed by a comprehensive institutional policy on conflicts of interest, which would also make the principles stated above operational. To this end, we recommend that WHO consults international experts on conflicts of interest in public health, such as Marc A. Rodwin, Judith Richter and others, in order to have an expert viewpoint on institutional wide

policies, the most effective safeguards and operational solutions for the organisation. These consultations should include inputs from NGOs defined above.

7. Benefits for non-State actors

It is recognized that any benefit derived by WHO from engagement with non-State actors should also accompany a benefit for the engaging party. There have been concerns expressed, however, that engagement of WHO with non-State actors can be misconstrued as WHO's "endorsement" of the engaging party's products, services, or positions.

QUESTION: How can WHO proceed to ensure a mutually derived benefit for non-State actors when engaging with WHO, while taking into account perceived reputational or other risks associated with such engagement?

ANSWER to Q7:

The issue of benefit for non-State actors is not an issue that should concern WHO. WHO's main mandate is "the attainment by all peoples of the highest possible level of health." WHO should not be distracted from this main objective.

8. Engagement in relation to WHO's financing

WHO is currently, and anticipates to continue to be, financed from a mix of assessed (Member States) and voluntary contributions (Member States and non-State donors). Recognizing that Member States, through WHO's governing bodies, are responsible for determining Organizational priorities, there is still a need to better engage non-State contributors to WHO, particularly in the context of evolving financing mechanisms (i.e. a proposed financing dialogue, subject to endorsement by the World Health Assembly), to ensure greater transparency in financing with a view to increased predictability and enhanced alignment of resources with the programme budget.

QUESTION: What are considerations and concerns that WHO should take into account when defining parameters and procedures for the involvement of non-State actors in the financing of WHO? What are the elements of these parameters and procedures that should be considered?

ANSWER to Q8:

Voluntary contributions by non-state actors should only be made to the agreed Global Programme of work and NOT TIED to specific areas. This would guarantee WHO's independence vis-à-vis its funders.

However, WHO should not accept funding from non-State actors whose work goes against the principles and aims of the organization.

A fundamental principle underlying funding of the WHO is transparency with regard to how much financing each aspect of the GPW receives and the source of the funding.

NGOs should be allowed to monitor and participate in order to guarantee transparency and scrutiny.