25 October 2013

Comments on the discussion paper for the informal consultation with Member States and non-State actors, 17–18 October 2013

The signatories* to these comments are members of the Democratising Global Health Coalition on the WHO Reform (DGH) that closely follows the WHO reform to ensure that the coordinating, regulating, norm-setting and leadership role of the WHO, as stipulated in its Constitution, is not compromised[1]. DGH has engaged in the reform process to ensure that WHO will significantly improve its work for the attainment by all peoples of the highest possible level of health (WHO Constitution, Art.1).

These comments represent a follow-up to the DGH participation at the two-day consultation on WHO's engagement with 'non-state actors', Geneva 17-18 October 2013. They highlight some of the key comments shared during this meeting and provide some additional observations related to the discussion paper, as these could not be raised for time reasons. They build on input that we have already provided to WHO during the past consultations[2].

1. Distinction of actors

One of our main concerns relates to the proposal in the discussion paper - also applied to the format of the consultation - to group all external actors with whom WHO interacts (apart from its Member States) under the generic umbrella of 'non-state actors'.

The 'non-state actor' approach obscures fundamental differences and blurs the lines between public-interest NGOs and the private commercial sector.

We would like to remind WHO that Member States' recommendations have emphasized the need for distinct policies on interaction with NGOs, the private commercial sector and philanthropic organizations respectively. These recommendations date back to the special session of the Executive Board of November 2011 and were confirmed by the 65th World Health Assembly in May 2012. Decision 65(9) of the 65th WHA[3] was 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;*

We are of the opinion that WHO must ensure that clear distinctions are made within this range of actors and that the two policies called for by the WHA are developed as a priority. While overarching principles should govern all interaction with external actors, separate policies are needed to ensure clarity and transparency regarding the fundamental difference between **NGOs** and **private commercial entities,** including their philanthropic foundations, business associations and front groups, some of them being currently registered by WHO as NGOs in official relations.

The objective of the policy on engagement should be to strengthen alliances with civil society organisations that support WHO's mission worldwide. For NGOs interacting with WHO, the basic

[1] Core Statement of the Democratising 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] http://apps.who.int/datacol/answer_upload.asp?survey_id=518&view_id=522&question_id=10149&answer_id=14622&respondent_id=114724

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

principle against which these should be assessed, i.e. "*be free from concerns which are primarily of a commercial or profit-making nature (criterion 3.1.)*"[4], should be maintained.

Furthermore, as decided by the 130th Executive Board (EB) and supported by many Member States during the October 2013 consultation, WHO should apply safeguards and regulate the way it engages with **philanthropic organizations**. This could be achieved through a separate policy or by including this category of actors within the scope of the policy on relations with the private sector. Whichever modality is chosen, such a policy must be developed to ensure transparency with regard to WHO's interactions with such organizations and that there are adequate safeguard mechanisms against conflicts of interests. The WHO Secretariat should ensure that philanthropic organizations with which it interacts have aims and purposes consistent with WHO's Constitution and its policies, and are not driven by commercial interests that could conflict with WHO's public health mandate.

Finally, we support the suggestion which emerged during the October consultation to consider that the interaction between WHO and the academic sector also needs to be carefully considered, with specificities for establishing the necessary safeguards.

When engaging with different partnerships, WHO needs to be in a position to scrutinize the individual members engaged in any such partnership and thus make clear decisions as to whether it is or not appropriate for WHO to engage with that partnership.

WHO policy on engagement with global partnerships must be systematically applied. The WHO Secretariat should pro-actively follow its para 27 and provide member States with a report on the policy application and impact in order to ensure its updating and thus relevance. Finally, WHO has so far failed to prepare guidelines and operating procedures for the implementation of this policy and should ensure completion of this WHA mandate as a priority.

In conclusion on this point, we are encouraged by the general consensus reached at the consultation on separating these categories and would like to see this reflected in the WHO Secretariat's report to the EB in January 2014.

2. Conflicts of interest and dis-engagement/non-engagement

The objective of reforming the way WHO engages and interacts with external actors should not be centred around "making better use of resources" but rather focus on improving the quality of this engagement to further WHO's constitutional mandate. This improvement should thus aim at maximizing interactions with those actors whose aims and objectives are in line with WHO's mandate. The Framework Convention on Tobacco Control is a good model to follow in this regard.

As stated in our previous submissions, we are of the view that WHO should develop **a comprehensive framework of safeguards** for adequately and effectively addressing conflicts of interest. Such a framework would facilitate the development of policies for all the above-mentioned categories of actors, and clarify issues around individual and institutional conflicts of interest and their structural determinants. It would facilitate the development and adoption of clear criteria for identification of conflicts of interest and how to address them adequately.

The due diligence and risk management approach may be necessary managerial tools. A comprehensive conflicts of interest policy would lay out the necessary ethical, legal and operational criteria on which such tools and mechanisms would be based. Without such a policy, due diligence and risk management approach may end up being a managerial cover-up for harmful engagement with external actors.

WHO should not shy away from facing a central political issue: *conflicts of interest that pose the greatest risk to WHO are related to commercial and for-profit interests*. Therefore this should be at the centre of WHO's concerns regarding how to deal with conflicts of interest. The argument that everyone has a vested interest is a red herring, often used by industry to detract attention from the real

[4] http://www.who.int/civilsociety/relations/principles/en/index.html

issue at stake: the conflict between public health sand commercial interests. Non-state actors linked to the *producers* of goods and services (such as medicines, vaccines, unhealthy goods such as tobacco, alcohol, junk foods, etc.) have a commercial interest in the outcome of WHO processes, in particular with its regulatory and norm-setting functions that can influence the sale of their products. Engaging with them without adequate safeguards in place poses a major risk to the independence and integrity of WHO.

Engagement with philanthropic organisations must also be carefully managed as they are often not at arm's length from their founding industry and thus may be driven by commercial interests that could put WHO in a conflict of interest situation and compromise the agency's work on its public health mandate. This has already been recognized in the 2000 EB Guidelines 107/20. These foundations, when in the role of donors to WHO, have great power to influence WHO's directions and decisions through their financial leverage. Therefore, in order to protect its independence from such influence, WHO must take all possible precautionary measures to ensure that its coordinating, policy-making, regulatory, norms and standard-setting functions are not influenced by actors falling within this category.

3. WHO's regulatory mandate

We reiterate one of our major concerns: unless great care is taken, the changes proposed to the framework of WHO interactions with external actors will result in weakening WHO's position as a prime actor in public health and in opening the door to increased influence by private commercial interest.

One of the major pillars of WHO's constitutional mandate is the regulation of private commercial sector activities which impact on public health. Notable examples that have already saved many lives, and will continue doing so if WHO holds firm, are the International Code of Marketing of Breastmilk Substitutes and the Framework Convention on Tobacco Control.

The discussion paper lists, as one of the overall objectives for changing the rules of engagement with external actors, the objective of engaging «*in dialogue with non-State actors on how they can improve their activities so as to better protect and promote health*». If applied to the private commercial sector, this may take WHO down the corporate social responsibility path of the Global Compact or other corporate-driven, legally non-binding (and often unaccountable) initiatives. These have given corporations a seat at the table at various policy forums and access to UN officials. They have also been used to enhance their image, implying that they are socially responsible 'corporate citizens' when in reality their products and /or practices are harming public health. This objective is misleading, would drain WHO resources and drive attention of WHO and its Member States away from the regulatory mandate of the agency.

WHO should be able to consult with the private sector and interact with them, whenever this has added value to public health. However, any such interactions should be guided by clear principles and rules safeguarding WHO from undue corporate influence.

4. Different engagement for different types of actors

Recognizing the fundamentally different nature of NGOs and the private commercial sector, including their philanthropic foundations, business associations and front groups, is THE critical step. Only then can a meaningful matrix of interactions with each category of actors be developed.

The way WHO engages with each category of external actors should be rooted in the consideration of whether that actor has a primary interest in line with the organization's public interest mandate. The result will be that WHO will need to engage differently with different types of actors. Some suggestions in this direction follow below:

- Attendance at WHO governing body meetings should only be allowed for NGOs that do not represent the private commercial sector. We agree with proposals to end the 24-hour rule and to remove the practice of scrutiny of NGO statements by WHO prior to their delivery to the governing bodies. However, giving priority to statements prepared by groupings of NGOs is a problematic proposal as it can effectively introduce a new level of censorship and end up in exclusion of critical voices. The private commercial sector, their associations and front groups should not be able to attend or make interventions.
- This doesn't mean that WHO should not consult the private commercial entities and related associations, front groups, and foundations. However, such consultations should be transparent and open to public scrutiny. Public hearings, consultations and information gathering can be suitable mechanisms for this if well structured and managed transparently. However, policy decision-making and norms development in the public interest should be free from any influence from the private commercial interest.
- We support the position that experts participating in guideline development should not come from the private sector. Furthermore, financing should not be accepted from commercial enterprises for activities leading to production of WHO guidelines or recommendations as per EB 107/20 (Guidelines on working with the private sector).
- On human resources: We are of the opinion that pro bono staff or grants for human resources from private commercial enterprises should not be accepted as the risk of conflicts of interest is too great. The policy should also regulate the 'revolving doors' phenomenon and include a cooling off waiting period before its former employees can join commercial enterprises after leaving their WHO position.
- We are in favour of a transparency register and of allowing public scrutiny of WHO's engagements with external actors. However special attention should be given to the way this information is released in order to protect whistleblowers or watchdog groups.

5. Building on existing policies

Last but not least, we strongly agree with Member States who urged WHO to build on the existing principles for engagement with NGOs, the guidelines for working with the private sector and the partnership policy. We welcome the commitment by WHO to publish all post-consultation comments it receives on the dedicated site alongside the list of documents already posted.

Signatories:
Corporate Accountability International
International Baby Food Action Network (IBFAN)
Medicus Mundi International Network (MMI)
NGO Forum for Health

Further signatories might be added in the next days.