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Framework of engagement with non-State actors

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Report by the Secretariat to the regional committees

1. This report is submitted to the regional committees in response to decision WHA67(14).¹ It summarizes the issues raised by Member States during and after the Sixty-seventh World Health Assembly, together with requests made to the Secretariat for action or for the provision of clarifications.²

ISSUES RAISED BY MEMBER STATES

2. Overall, comments showed that there is convergence on the importance of engagement with non-State actors. Furthermore, some Member States have suggested that WHO's role in engaging with non-State actors should be strengthened and seen as coordination rather than engagement so as to reflect the position of the Organization as the directing and coordinating authority for health. At the same time, there is general agreement that in order for WHO to fulfil its constitutional mandate and core function, the integrity and independence of the Organization must be protected and safeguarded, and public confidence maintained.

3. The draft framework of engagement is considered to be a good basis for establishing and, where appropriate, strengthening relations with non-State actors, as long as risks and conflicts of interest are accurately described and transparently managed, and if the benefits of engagement are weighed carefully against the risks involved.

Conflicts of interest

4. There were several calls for a stronger approach and more information on conflict of interest. A strengthened approach will have to ensure that WHO actively manages conflicts of interest so as to avoid compromising the integrity of the Organization; and that the Organization's system for managing risks, particularly conflicts of interest, and conducting due diligence is sufficiently flexible. The framework of engagement should also clarify: (i) the distinctions between real and perceived conflicts of interest, and between individual and institutional conflicts of interest; (ii) how WHO should deal with actors not sharing the interest of the Organization or where secondary interests undermine public health; and (iii) how the Organization should distinguish between direct and indirect interests.

¹ See document A67/DIV./3 (available at http://apps.who.int/gb/e/e_wha67.html#Diverse_documents, accessed 11 July 2014).

² See the summary records of the Sixty-seventh World Health Assembly, Committee A, second meeting, section 2 and twelfth meeting, section 4 for comments made by Member States during the Health Assembly. Subsequent comments and questions from Member States are posted on the WHO reform website (available at http://www.who.int/about/who_reform/non-state-actors/).

Due diligence: process and criteria

5. The importance was stressed of conducting transparent due diligence and risk assessments before entering into engagement in order to protect and preserve WHO's integrity and reputation. More clarity was requested on the process and modalities of conducting due diligence, the criteria applied, and the link between due diligence and conflict of interest.

Financial resources from private sector entities to WHO

6. The potential influence of funding from private sector entities on WHO's programmes and priorities was frequently stressed. At the same time, the positive experience recorded with the Pandemic Influenza Preparedness (PIP) Framework was cited and it was proposed that such pooling of funds should be used as the preferred mechanism for receiving funds from private sector entities. Specific concerns were raised concerning: earmarking of funds; the use of funds from the private sector for information gathering, meeting participation and publications; private sector entities using their engagement with WHO for promotional purposes; the channelling of private sector funds through other non-State actors to WHO; and the importance of making sure that programmes are not too dependent upon individual funders.

Secondments

7. Member States questioned the seconding of non-State actors' representatives to WHO. The key concern in this regard is to protect the independence and the integrity of WHO, particularly with respect to its normative and standard-setting functions. Member States pointed out that although the draft framework states explicitly that WHO does not accept secondments from private sector entities, it proposes accepting secondments from other types of non-State actor. Some Member States proposed that WHO should not allow secondments from any non-State actors, while others only sought to exclude secondments from private sector entities, allowing secondments from other types of non-State actors as long as there are clear criteria regarding the circumstances under which WHO could accept them.

Applicability of provisions of private sector policy to non-private sector entities

8. Some Member States were worried that some non-private sector entities may be influenced by private sector entities. It was suggested that nongovernmental organizations, philanthropic foundations and academic institutions not "at arm's length" from private sector entities should be also considered as private sector entities. In this regard, it has been suggested that WHO may consider adding the definition of "international business associations" as a sub-category to the "private sector entities" since WHO has stated that these associations are considered private sector entities and that the Organization has not developed a separate policy for international business associations.

9. The importance of an explicit process and criteria to determine when the provisions of private sector policy should be applied to non-private sector entities was highlighted.

Official relations

10. Some Member States referred to the continuation of the official relations' policy. Relevant submissions covered, for example, the question of which organizations should be eligible for admission into official relations, with particular regard to international business associations.

11. Some Member States proposed that national and regional affiliates of non-State actors who are themselves in official relations, should not "by definition" be considered to be in official relations.

12. Some Member States questioned the following: whether academic institutions can also be admitted; and what triggers the two-year period of collaboration prior to admission that was proposed in line with the principles governing relations between WHO and nongovernmental organizations.¹

Boundaries: entities with which WHO will not engage

13. Although there is an agreement on excluding engagement with the tobacco and arms industries, other Member States proposed that engagement should also be excluded with, for example, the alcohol and food and beverages industries, and those involved in labour law violations and environmental damage.

Involvement of Member States in oversight and management of engagement

14. It was suggested that the respective roles of the governing bodies and of the Secretariat should be clarified, that private sector involvement should be open to Member States' scrutiny and that Member States should be involved in due diligence. It was further proposed to increase to more than six the number of members of the Committee on non-State actors of the Executive Board, to allow Member States not members of the Executive Board to be part of the Committee, and to require the Committee to report also to the Health Assembly.

15. Some Member States proposed that Member States should be able to participate in the Senior Management Committee on Engagement.

Partnerships

16. It was pointed out that it is not clear whether the framework applies also to partnerships that WHO is hosting or involved with and how conflicts of interest are managed in such partnerships. It was further suggested that WHO should learn from successful multistakeholder initiatives and public-private partnerships outside WHO.

17. Some Member States suggested that the concept of "non-State actor" could be further refined to include entities falling outside the definition, such as public-private partnerships and multistakeholder initiatives.

Competitive neutrality

18. It was suggested that WHO introduces the concept of "competitive neutrality" (also known as "level playing field," "competition on equal terms") with regard to WHO's engagement with the private sector. The suggestion was designed to ensure that the Organization's interactions with entities operating in an economic market do not result in undue competitive advantages or disadvantages for the entities concerned.

Medicine donations

19. It was proposed that provisions be added in order to clarify how the Organization should act in emergency situations and how it should avoid the dumping of medicines as donations. Some Member States suggested the need for objective and justifiable criteria for the selection of the countries, communities or patients to benefit from such donations.

¹ The text of the current principles was adopted in 1987 by the Fortieth World Health Assembly in resolution WHA40.25.

Protection of WHO's name and emblem

20. Questions were raised on the appropriate mechanism and measures that WHO is using in order to protect its name and emblem, so as to avoid any misuse for promotional purposes, in particular by private sector entities.

Evaluation of the framework

21. Some Member States noted that a process for evaluation of the Framework, including with regard to due diligence and risk assessment, is missing from the draft policy. They suggested that the evaluation function should be embedded into the framework in order to allow for: regular review, by the Health Assembly through the Executive Board, of the application of the framework; identification of problems, obstacles and other challenges; and the identification of lessons learnt with a view to informing future decisions on the revision of the Framework two, three or five years after its approval.

SPECIFIC REQUESTS FOR SECRETARIAT ACTION PRESENTED BY MEMBER STATES

22. The Secretariat was requested to facilitate easier access to documentation related to the development of the framework of engagement. The Secretariat has therefore updated the WHO reform website so as to provide a specific webpage that gathers together details of policies that are currently in force, other policies relevant to the process and additional background information.¹

23. The Secretariat was requested to provide a summary explaining how other United Nations agencies handle issues relating to conflict of interest in respect of engagement with the private sector. United Nations agencies including WHO are exchanging experiences on the management of conflicts of interest and the conduct of due diligence, risk assessment and risk management at meetings of United Nations private sector focal points. The Secretariat has initiated a study of practices in the United Nations system that will be published on the WHO reform website once completed.

24. Member States have also requested the Secretariat to:

- provide information on financing, in-kind contributions, secondments and type and level of engagement with non-State actors;
- provide a list of secondments from non-State actors to WHO, including the entity funding them;
- provide the summary of the consultations conducted by the Special Envoy;
- present a list of Public–Private Partnerships in which WHO is currently involved;
- clarify the terms of reference of the Senior Management Committee On Engagement;
- conduct a more thorough investigation and analysis of all the types of non-State actors that should be covered by the Framework of engagement.

Information on the Secretariat's response will be made available on WHO's website.

25. Member States also made specific suggestions for the Secretariat to make wording changes to the draft framework of engagement, for example, replacing the term “global public goods” by “global public health”. Some of these proposals imply substantive changes, the aims of which have been referred to above in relation to issues raised by Member States. Other proposals are of an editorial nature and will be captured in the paper to be presented to the Executive Board.

¹ Available at http://www.who.int/about/who_reform/non-state-actors/, accessed 11 July 2014.

CLARIFICATIONS REQUESTED FROM THE SECRETARIAT

26. Clarifications were requested on which parts of the proposed framework would constitute policy changes and which parts would confirm current policies and practices. The framework of engagement is based on existing policies and practices. The consolidation of policies and practices into one framework and four policies will strengthen its coherent application at all levels of WHO. The major proposed policy changes are set out below.

- Using four groups for classifying actors (nongovernmental organizations, private sector entities, philanthropic foundations and academic institutions) and applying a definition of when a non-State actor influenced by the private sector should be considered as a private sector entity.
- Strengthening transparency by requiring non-State actors to provide information on their governance and funding. This information on the nature of actors, together with information on WHO's engagement with them, will be disclosed in the register of non-State actors.
- Strengthening oversight on engagement by Member States and by senior management (through, respectively, the Committee on Non-State Actors of the Executive Board, Senior Management Committee on Engagement).
- Strengthening the accountability of organizations in official relations, including by giving the Executive Board the possibility of discontinuing official relations prior to the review scheduled after three years.

27. Clarification was sought concerning the information that will be provided in the register of non-State actors. All non-State actors engaging with WHO will be required to provide information on: their name, legal status, objective and governance structure; the composition of their main decision-making bodies; their assets, annual income and funding sources, main relevant affiliations and webpage; and one or more focal points for WHO contacts. For each non-State actor, this information will be made publicly available in the register together with a description of all WHO's engagements with the non-State actors concerned, including information on resources received by office and programme area.

28. It was asked whether nongovernmental organizations can participate on an ad hoc basis in meetings of WHO's governing bodies and whether the procedure for admitting organizations into official relations could be complemented by an accreditation procedure. The possible use of accreditation has been considered in previous consultations without eliciting enough support from Member States.

29. An explanation was requested of the meaning of "important and intentional" in the draft framework (in the section on non-compliance). Implementation depends on the actions of the Secretariat and compliance by the non-State actors themselves. Therefore the Secretariat needs tools to take action as a consequence of non-compliance, as described in this section. As in any non-compliance mechanism, the consequences of non-compliance need to be commensurate with the degree of non-compliance in line with the principle of proportionality. For example a small delay in providing information will only require a reminder, while the refusal to provide essential information constitutes the violation of terms of a signed agreement can lead to disengagement.

30. Clarification was sought on what resources nongovernmental organizations can receive. WHO contracts with nongovernmental organizations as implementing partners in situations such as humanitarian crises in order to provide key services for the populations affected. A similar practice is followed in other situations, including the organization of conferences and workshops, and the

development of training materials. These resources are provided on the basis of a contractual agreement for the performance of work or by means of stand-by agreements for emergencies

31. An explanation was requested of the meaning of the term “scientific initiator” in the draft policy and operational procedure on engagement with private sector entities. Nongovernmental organizations and in particular scientific societies often mandate private companies to organize their congresses. This practice does not exclude WHO from participation or even from co-sponsoring such congresses as long as the nongovernmental organization (the scientific initiator) has sole responsibility for the content, with the responsibility of the private sector entity limited to logistical organization.

32. Clarification was requested concerning financial contributions for participants. This provision intends to ensure that the participation at meetings for specific participants or WHO staff cannot be financed by private sector entities. The only exception is a meeting where the cost of travel and/or accommodation is paid for all speakers and other participants and where the risk assessment has concluded that there are no significant conflicts of interest for WHO in participating and accepting this support.

33. The Secretariat was asked to clarify whether the term “product development” referred to health products. Product development refers to any health-related product, such as pharmaceuticals, health technologies, but also, for example, pesticides used to impregnate bednets.

34. Clarifications were requested on what contract modalities are used for engagement and if such contracts are made public. In its engagement with non-State actors, the Secretariat uses several contractual agreements and instruments for different purposes. For some of these, the Secretariat has developed model texts which are adapted to the particular circumstances. A non-exhaustive list of examples includes the following: Agreements for the Performance of Work; Technical Services Agreement, typically concluded with academic institutions; product research and development agreements; agreements for the acceptance of donations of pharmaceuticals for the public sector in developing and emerging countries; agreements for the transfer of technology to manufacturers in developing and emerging countries; and donation agreements for the receipt of financial resources. Currently, such instruments are not made public.

ACTION BY THE REGIONAL COMMITTEES

35. The regional committees are invited to discuss this report and the draft framework contained in document A67/6 and to report on their deliberations to the Sixty-eighth World Health Assembly, through the Executive Board.

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