

Joint civil society submission on “progress in the implementation of the SBI conclusions on non-Party stakeholder engagement with a view to considering how such engagement can be further enhanced.”

January 30, 2018

1. Introduction

The following public-interest NGOs welcome the opportunity to register this joint submission with regard to “*Views from Parties and non-Party stakeholders to take stock of progress in the implementation of the SBI conclusions on non-Party stakeholder engagement with a view to considering how such engagement can be further enhanced*”¹: ActionAid International*, Asian Peoples Movement on Debt and Development*, Center for Biological Diversity*, Corporate Accountability International*, Corporate Europe Observatory*, Environmental Rights Action/Friends of the Earth Nigeria, ETC Group,* Friends of the Earth England, Wales and Northern Ireland, Friends of the Earth International*, Friends of the Earth US, Greenpeace*, IBON International*, Jo-Jikum, SustainUS*, Third World Network*, and 350.org (Sustainable Markets Foundation)*.

This submission includes representation from organizations with (*) and without observer status. These organizations are members of ENGO, RINGO, and YOUNGO constituencies.

We submit these recommendations:

- In support of the recommendations made by Parties representing the majority of the world’s population;
- On behalf of our hundreds of thousands of members, volunteers, and activists spanning the globe;
- Calling on Parties to urgently implement the recommendations contained herein, in order to ensure the greatest likelihood of achieving the goals of the UNFCCC and its instruments.

It is important to enhance engagement with non-Party stakeholders

Observer organizations are the major vehicle for ensuring the views of non-governmental organizations are reflected in the UNFCCC process. They also provide tremendous support to Parties, including technical capacity and expertise, thereby enhancing the Party-driven process. In addition, public serving observer organizations contribute to increasing the integrity of these processes and promoting broader ownership of the agenda –bringing with them the voices of people around the world. Indeed, in May 2016, Parties reiterated the importance of guaranteeing the effective participation of observer organizations in the UNFCCC process.²

With this in mind, we look forward to more opportunities in the near future for public-serving observers and non-Party stakeholders to more closely engage in the UNFCCC process, including via the specific opportunities Parties recommended for consideration at SB46.³ We would also like to thank the Presidency and Secretariat for inviting Parties and non-Parties to participate in the Open Dialogue at COP23, to discuss, among other topics, how to enhance engagement.

It is a given that, with any engagement, let alone enhanced engagement, as invited by the Paris

¹ FCCC/SBI/2017/7, paragraph 120, <http://unfccc.int/resource/docs/2017/sbi/eng/07.pdf>

² FCCC/SBI/2016/L.14, paragraph 17, <http://unfccc.int/resource/docs/2016/sbi/eng/114.pdf>

³ FCCC/SBI/2017/7, paragraphs 116-120, <http://unfccc.int/resource/docs/2017/sbi/eng/07.pdf>

Agreement, Parties must acknowledge the inherent and increased risk for conflicts of interest and conflicting interests,⁴ and naturally ensure that all such engagement supports, rather than threatens, the integrity and legitimacy of the UNFCCC, its Parties, outcomes, and processes.

Enhancing non-Party stakeholder engagement necessitates safeguarding the integrity and legitimacy of the UNFCCC

If Parties wish to protect the integrity and legitimacy of the UNFCCC and arrive at meaningful and timely solutions to the urgent crisis of climate change, they must create the political space for effective climate policymaking. Climate policy decision-making must be free of interests that contradict an imperative objective of the Convention, “to stabilize greenhouse gas concentrations at a level that would prevent dangerous anthropogenic (human induced) interference with the climate system”, as well as the ultimate objective of the Paris Agreement, “keeping a global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius.”

Therefore, we recommend Parties to the United Nations Framework Convention on Climate Change (UNFCCC) urgently act to protect international and national climate policy from the commercial and other vested, conflicting interests of industries that exacerbate the climate crisis, and those that represent these industry interests, by:

1. **Adopting a definition of a “conflict of interest”** that recognizes that the integrity and objectives of an individual or institution become fundamentally compromised when they engage with entities whose financial/vested/private interests (or the interests of those they represent) place the individual or institution in an irreconcilable conflict with the public mandate they are beholden to serve; and
2. **Adopting a rigorous conflict of interest policy framework** that draws from established global precedents by preventing non-Party stakeholders and observer organizations that either have, or represent those that have, financial interests requiring them to emit large quantities of greenhouse gases in order to continue to maximize profit (and therefore have material objectives that are fundamentally in conflict with the ultimate objective of the Convention) from unduly influencing or undermining national and international climate policy.

2. Background

Parties and civil society groups call on the UNFCCC to review procedures and put in place a framework to protect against conflicts of interest while enhancing engagement.

Under the SBI agenda item “Arrangements for Intergovernmental Meetings” (AIM) as part of discussions on enhancing engagement, multiple Parties, supported by broad observer organization representation, have made a clear call for strengthening procedures to protect UNFCCC processes against conflicts of interest:

1. At SB 44 in May 2016, Parties representing nearly 70% of the world’s population requested information from the Secretariat about existing procedures to protect against conflicts of interest, and requested that Parties discuss a policy to protect against conflicts of interest with official observers to the UNFCCC, in light of the presence among observers of trade associations and industry groups whose objective is to advance the interests of major polluting industries in the face of climate regulation that interferes with their profits. The issue was referred for discussion during a SBI AIM in-session

⁴ For more context on these concepts and background on the evidence referred to elsewhere in the submission, please see the joint civil society submission regarding the Arrangements for Intergovernmental Meetings in-session workshop on opportunities to further enhance the effective engagement of non-party stakeholders at SB46, February 2017: http://unfccc.int/files/parties_and_observers/application/pdf/855final.pdf

workshop on enhancing observer participation at SB 46 in May 2017, beginning with an invitation for submissions due in February 2017.

2. During SB 46 in May 2017, at the “In-session workshop on opportunities to further enhance the effective engagement of non-Party stakeholders with a view to strengthening the implementation of the provisions of decision 1/CP.21”, Parties, panelists, and civil society constituencies expressed concern over the lack of procedures in place to protect against conflicts of interest and the dangers allowing such conflicts to go unaddressed is having on climate policymaking.⁵ This concern was raised by various participants in every element of the workshop (panel presentation, open-floor discussion, and three break-out sessions). Parties echoed these concerns in the subsequent negotiations that ensued over the following two weeks, yet were excluded from the decision outcomes (apart from another opportunity to make submissions on enhancing engagement).
3. At COP23/SB 47, during the Fiji Presidency’s Open Dialogue between the Parties and non-Party stakeholders, a discussion that centered on two themes, (NDC enhancement and implementation, and enhancing observer access and participation), both Parties and multiple civil society constituencies (including YOUNGO, ENGO-CJN, and WGC) pointed to other UN processes that establish that a conflict of interest policy is the norm, rather than the exception, and called for a legal framework within the UNFCCC that protects against conflicts of interest.⁶
4. These calls made by Parties were supported in October 2017 by the European Union Parliament when 388 Members of European Parliament voted in favor of a motion as part of its Resolution on the 2017 UN Climate Change Conference in Bonn, Germany. This resolution specifically “Welcomes the inclusiveness of the UNFCCC’s process; considers that ensuring effective participation requires that the issue of vested or conflicting interests be addressed; in this context, calls for all participants in the process to put in place guidelines or procedures that enhance openness, transparency and inclusiveness without compromising the aims and objectives of the UNFCCC and the Paris Agreement”.⁷

Clearly, Parties and non-Party stakeholders have made a strong call for procedures to be put in place in order to protect the integrity and legitimacy of the UNFCCC from conflicts of interest and conflicting interests.

3. Why does the UNFCCC need a definition of “conflicts of interest” and a policy framework that creates differentiated rules for engagement with non-Party stakeholders and strengthens procedures to avoid admitted observers with polluting industry ties?

Conflict of interest definition

The UNFCCC’s seeks to implement the objective of the Convention “to stabilize greenhouse gas concentrations at a level that would prevent dangerous anthropogenic (human induced) interference with the climate system.” Yet, the UNFCCC finds itself in a state of serious institutional conflict of interest by welcoming practices like public-private partnerships and corporate sponsorship of the talks, that invite the very corporations both most responsible for and that continue to exacerbate the climate crisis to unduly influence the political response to

⁵ FCCC/SBI/2017/INF.7 (2017), <http://unfccc.int/resource/docs/2017/sbi/eng/inf07.pdf>

⁶Open Dialogue between the Parties and non-Party stakeholders: Fijian Presidency’s Report (2017), http://unfccc.int/files/parties_and_observers/application/pdf/final_presidencys_open_dialogue_report_171117.pdf

⁷ European Parliament resolution of 4 October 2017 on the 2017 UN Climate Change Conference in Bonn, Germany (COP23) (2017/2620(RSP) (October 2017), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2017-0380+0+DOC+XML+V0//EN>

addressing that same crisis.

By adopting a legally concise understanding of conflicts of interest, the UNFCCC can positively:

- Ensure (a) the integrity of decisions made on the public's behalf; (b) its independence, such as from corporate funding that risks distorting public mandates and agendas; and (c) it maintains the trustworthiness of and public trust in public officials and institutions.
- Clarify the distinction between non-Party stakeholders with a mandate to act in the public interest from those that have a fiduciary mandate to make profit and those that advance a privatizing agenda;
- Enable political action to address the underlying concerns.

Rules for engagement with non-Party stakeholders, differentiated by type of actor

Not all non-Party stakeholders serve the public interest and seek to advance the objectives of the UNFCCC and Paris Agreement. Many of the non-Party stakeholders involved in the UNFCCC process -- including the private sector corporations sponsoring the negotiations, and those using platforms such as the Lima Paris Action Agenda, and its successor, the Global Climate Action Agenda, and its NAZCA platform, to greenwash their role in driving climate change -- are business entities with a duty to their shareholders to maximize profits. These same entities cannot be expected to also advance the objectives of the Convention, where it clashes with the source of their profits, i.e., extracting, selling, and burning, fossil fuels or other products with intensive carbon footprints.

Parties must differentiate between the distinct categories of non-Party Stakeholders, including observers, and treat the categories differently, in accordance with their interests. Having drawn clear distinctions between categories of non-Party stakeholders, Parties must define clearly what types of interactions with the UNFCCC are unacceptable for business-interest actors to participate in as result of their profit-motives.

Some of these interactions include implementation support; public-private partnerships, or PPPs; private-sector sponsorships; privatization and deregulation programs; interchange of personnel between private and public sectors (revolving doors); participation in pre-negotiations; Lobbying; participating via state delegations and in some cases negotiating on behalf of governments; and norm-and standard-setting, (i.e. on the board of official bodies e.g. Green Climate Fund or the Technology Executive Committee). For example, norm-setting is the prerogative of sovereign States. It is therefore acceptable for public interest NGOs with no industry-related conflicts to provide input into decision-making processes, and to be granted access to a transparent process. It is unacceptable, however, for business-interest NGOs or actors with profit-motives and/or financial interests in corporations/industries that would be affected by the norms to have any access to or influence in these processes because their interests.

Procedures that exclude the admission of observers with polluting industry ties

Currently, the only requirements for becoming an official observer to the UNFCCC are that an organization is legally registered as non-profit organization, and that it work on matters related to climate change. Unfortunately, some of the organizations that are the most detrimental to climate change meet these exact criteria.

The UNFCCC currently counts among its admitted observers organizations those that directly or indirectly represent the interests of fossil fuel corporations such as Exxon Mobil, Chevron, Shell, and BP, as well as other polluting corporations from the industries most responsible for the majority of global-emissions to present. These industry representatives are provided with the

legitimacy of admitted observers, access to negotiators, documents, and information, and ample opportunity to push their private, corporate and profit-driven agenda in an area meant to serve the public interest.

Some officially admitted UNFCCC observer organizations' members are made up exclusively of fossil fuel or other polluting corporations. There is therefore no question whose interests they represent in the talks, and what level of access this grants its members to the highest-level decision-makers on the global public governance stage, albeit under the pretense of providing solutions to climate change, and working toward the ultimate objective of the Convention.

When an observer organization, which represents the commercial interests of its private sector members, is able to use its access to a public institution to slow, derail or direct the outcomes of negotiations toward the interests of its members, *that* is the direct consequence of allowing entities with interest that conflict with the ultimate objective of the Convention to participate in the process with no safeguards for avoiding adverse outcomes.

Unfortunately, in the case of the UNFCCC, the risk of conflicting interests undermining UNFCCC processes is not perceived, but very real.

Some UNFCCC admitted observer organizations that represent and must serve the interest of the transnational corporations included in their membership use their observer status to delay, weaken, and thwart progress towards achieving the UNFCCC's objectives. A few examples of observer organizations with conflicting interests include⁸:

- The **U.S. Chamber of Commerce**, which is funded and overseen by major corporate polluters. It is currently receiving millions of dollars from Exxon Mobil. Even when directly asked, its executives have not admitted that human activity is the cause of climate change. The Chamber has criticized both the targets set out in the Paris Agreement as well as the measures proposed to meet them, and has aggressively undermined domestic climate policies in their tracks. Yet it is still granted observer status.
- **BusinessEurope's** membership and leadership includes many polluting corporations, so it isn't surprising that the organization has aggressively stymied climate policy initiatives for years. BusinessEurope's lobbying has successfully weakened and filled with loopholes key policy proposals such as the EU's 2030 climate targets or the EU Emissions Trading Scheme, ensuring their members interests came before Europe's citizens and the climate.
- The **Business Council of Australia's (BCA)** member base is made up of 127 CEOs from Australia's largest and wealthiest corporations. It is funded by major polluters that also sit on its climate change committee. The BCA has failed to acknowledge the severity of climate change, its causes, or the dire need for mitigation. Consistent with this stance, it has opposed climate policies and dismissed key targets of the Paris Agreement as far-fetched.

These are just a few examples of the multitudes of business and industry groups that are granted observer status with no protections in place, and therefore are able to use that status to unduly influence UNFCCC process to their vested, private interests, undermining political will and stalling the urgent need for progress.

⁸ ActionAid, Asian Peoples' Movement on Debt and Development, Corporate Accountability, Corporate Europe Observatory, and ETC Group, Polluting Paris: How Big Polluters are undermining global climate policy (2017), https://www.corporateaccountability.org/wp-content/uploads/2017/10/PollutingParis_COP23Report_2017.pdf

Because these groups walk amongst us without distinction, Parties and even other observers make a common-sense assumption that they have been admitted because they have been properly vetted for conflicting interests. Unfortunately, that is currently not the case, as surprisingly the UNFCCC has no procedure in place to identify, let alone rectify this type of situation.

4. The UNFCCC still lacks policies to safeguard against conflicts of interest, let alone define the concept

Despite these multiple, clear calls by Parties and public-serving non-Party stakeholders, the UNFCCC still fails to formally recognize the concept of conflict of interest, and there remains no application of any procedures to safeguard against conflicts of interest or conflicting interests at the UNFCCC. Unfortunately, existing procedures regulating engagement with non-Party stakeholders are wholly inadequate when it comes to protecting the UNFCCC's legitimacy, integrity, independence, credibility, and reputation from conflicts of interest and conflicting interests.

Last March (2017), the UNFCCC Secretariat released a document as part of its calls for Partnerships for COP23 entitled "UNFCCC Secretariat Guidelines for Partnership".⁹ These guidelines appear to have been drafted and released without the consultation of Parties, a critical component of any such set of guidelines. In addition, these guidelines incorrectly subsume all types of engagement under the term "partnerships," incorrectly implying that all forms should be regulated the same way, instead of distinguishing between the different types of engagement and how the secretariat should engage with different kinds of actors. They also lack effective frameworks to protect against the vested interests of corporations seeking to undermine climate policy, essentially giving greater credence to weak eligibility criteria (such as showing a commitment to climate causes and demonstrating corporate social responsibility, a tactic frequently used by corporations to green-wash themselves) than the worrisome criteria that should exclude a potential partner.

Remarkably, this lack of safeguarding sets the UNFCCC apart from other UN institutions, including the World Health Organization and UNICEF, not to mention institutions and governments worldwide, that have long-since recognized this risk and put specific procedures in place to protect against it.

5. Parties must draw on existing precedents (FCTC, FENSA, OECD, UNICEF, UN, etc.) around the world and their own national legislation by acting in accordance with, rather than against, these precedents, and create procedures for managing the risks of conflicts of interest that are introduced/exacerbated with enhanced engagement

Because public and private institutions alike (from national governments to international and intergovernmental organizations, to law firms) have the potential for conflict of interest, it is the rule, not the exception, that they also have policies to manage them. There exist useful precedents from across the world and different disciplines and sectors, from which to draw inspiration and best practices. These include but are in no way limited to the World Health Organization (WHO), the World Health Organization Framework Convention on Tobacco Control (FCTC), the Organisation for Economic Co-operation and Development (OECD), and UNICEF.

In fact, most Parties have policies in place to safeguard their public governance processes from

⁹ UNFCCC Secretariat Guidelines for Partnership (2017), http://unfccc.int/files/secretariat/partnerships/application/pdf/b_2017_1_unfccc_guidelines_for_partnership_final.pdf

conflicts of interest and conflicting interest in their national governments, regionally, and internationally. These include the United States, Australia, Brazil, the EU and its member countries, i.e. those currently opposed to such a policy at the UNFCCC.

Other UN bodies already recognize the need for measures to protect against conflicting interests and conflicts of interest

Article 5.3 of the World Health Organization's Framework Convention on Tobacco Control states that "In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law."¹⁰

Its guidelines for implementation¹¹ include recommendations for governments to implement at the national level as well:

- (1) *Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties' tobacco control policies.*
- (2) *Establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions that occur.*
- (3) *Reject partnerships and non-binding or non-enforceable agreements with the tobacco industry.*
- (4) *Avoid conflicts of interest for government officials and employees.*
- (5) *Require that information provided by the tobacco industry be transparent and accurate.*
- (6) *Denormalize and, to the extent possible, regulate activities described as "socially responsible" by the tobacco industry, including but not limited to activities described as "corporate social responsibility".*
- (7) *Do not give preferential treatment to the tobacco industry.*
- (8) *Treat State-owned tobacco industry in the same way as any other tobacco industry.*

Indeed, many Parties belong to other intergovernmental institutions like the Organisation for Economic Co-operation and Development, whose Guidelines for Managing Conflict of Interest in the Public Service, endorsed by Parties in 2003, state in no uncertain terms that "when conflict-of-interest situations are not properly identified and managed, they can seriously endanger the integrity of organizations and result in corruption in the public sector and private sector alike."¹²

The Guidelines contain very pertinent advice, including that public institutions should:

- Ensure that effective procedures are deployed for the identification, disclosure, management, and promotion of the appropriate resolution of conflict-of-interest situations; and
- Create an organizational culture in which dealing with conflict-of-interest matters can be freely discussed and raised.

Parties must draw from existing best practices with regard to conflicts of interest, and must engage in the development of UNFCCC-specific policies with the support of independent and reputable experts in the field.

6. Recommendations for Parties and the Secretariat:

¹⁰ World Health Organization Framework Convention on Tobacco Control, Article 5.3 (2003),

http://www.who.int/tobacco/wntd/2012/article_5_3_fctc/en/

¹¹ The guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control (2008),

http://www.who.int/fctc/guidelines/article_5_3.pdf

¹² Managing conflict of interest in the public service: OECD Guidelines and country experiences (2003),

<http://www.oecd.org/gov/ethics/48994419.pdf>

Parties to the United Nations Framework Convention on Climate Change should act to protect international and national climate policy from the commercial and other vested interests of industries that exacerbate the climate crisis, and those that represent these industry interests, by:

- (1) Adopting a definition of a “conflict of interest” that recognizes that the integrity and objectives of an individual or institution become fundamentally compromised when they engage with entities whose financial/vested/private interests (or the interests of those they represent) place the individual or institution in an irreconcilable conflict with the public mandate they are beholden to serve.
- (2) Adopting a rigorous conflict of interest policy framework that draws from the established international precedents and:
 - a. Strengthens the procedures for engagement with non-Party stakeholder by preventing entities that either have, or represent those that have, financial interests requiring them to emit large quantities of greenhouse gases in order to continue to maximize profit (and therefore have material objectives that are fundamentally in conflict with the ultimate objective of the Convention) from unduly influencing or undermining national and international climate policy.
 - i. Business-interest non-Party stakeholders shall not have access to or influence over norm-and standard-setting activities of the UNFCCC, as carried out by its Parties, or its Secretariat.
 - ii. Parties and the Secretariat should recognize the impossibility of inviting private funding into the UNFCCC because of the inherent dangers of interacting with the private sector, especially in regards to policy making and the acquisition of resources. This includes public-private partnerships, sponsorship, human resource capacity such as staff secondments and consulting contracts, etc.
 - b. Strengthens the procedures for admission of observers according to the same standard.
 - i. This includes due diligence in screening for such things as public disclosure of industry affiliations, industry funding, etc.
 - ii. Entities with a profit-motive, and/or with ties (financial or otherwise) to private sector entities whose business model contributes to climate change, must not be permitted the level of access permitted to entities working in the public interest and who can demonstrate they do not have those same ties to the industry. These include but are not limited to industry trade associations, front groups, private philanthropies with interests in said industries, etc.
 - iii. Public-interest NGOs, academics and academic institutions, researchers and research institutions, and other public-interest entities must demonstrate that they do not have ties (financial or otherwise) with industries whose business model contributes to climate change.
 - c. Draws from established global precedents with regard to regulating conflicts of interest, and creates a UNFCCC-specific framework for engagement.
 - i. This framework should differentiate between the different kinds of non-Party stakeholders according to whether they work in the public interest, or work to advance private interests because they have a legal or contractual duty to maximize profits for shareholders.
 - ii. It should also differentiate between the different types of engagement acceptable with each set of actors, taking into account these different public or private interests and the inherent diverging interests implied by the latter.