

Negotiating a World Health Organization (WHO) Pandemic Treaty by Taking a Public Private Partnership Approach?

Essential safeguards and transparency rules for corporate sector engagement dangerously absent from Conceptual Zero Draft

[For the consideration of the Intergovernmental Negotiating Body (INB) responsible for drafting and negotiating a WHO convention, agreement, or other international instrument on pandemic prevention, preparedness, and response]

TO: INB Bureau and the Parties

CC: WHO Director-General, United Nations General Secretariat

As the WHO Intergovernmental Negotiating Body (INB) gathers in Geneva from 5 to 7 December 2022 to assess the so called “Conceptual Zero Draft” (CZD) of a WHO convention, agreement or other international instrument on pandemic prevention, preparedness, and response (“pandemic treaty”), the undersigned representatives of civil society organizations (CSOs) share with the INB and all the Member States involved in the INB process a number of critical observations that relate to the process and the substance of this proto-draft of the treaty text.

These are our remarks:

1. Absence of safeguards exposes the treaty process to market-driven, profit-making logics

Spread across various articles of the CZD are references to the ‘private sector’ being readily welcomed to engage in the negotiation and participate in the treaty’s implementation. Yet, wholly missing is any comprehensive guidance or even a marginal mention of ground rules aimed to make sure that the private sector will not exploit future pandemics as it has with COVID-19, at the cost of public funds and people’s lives. This substantive gap should be reason for great concern for the INB and Member States.

With the omission of any concrete discourse, or proposal so far, aimed at adequately safeguarding the treaty process—in terms of mitigation of revolving door practices and management of conflicts of interest—the INB and the WHO cannot guarantee that the negotiations of the new international agreement or convention and its outcomes will emerge as genuine and effective pro-public health mechanisms to prevent, prepare for, and respond to future pandemics. It is obvious that certain health-related industrial sectors will have a role in future pandemic prevention, preparedness, and response. Yet, this circumstance indeed calls for additional Member States’ responsibility in setting strict rules for how negotiations are conducted. Important media investigations have revealed the intrusive and unrestrained leverage that a handful of philanthropic foundations and pharmaceutical corporations have used to shape and impose a global strategy for tackling the pandemic in recent years.¹ We also know how industrial sectors have embedded themselves in this and other policy fora, to consolidate their power and influence.² That is why, at this very early stage of the WHO process, we challenge the political ambiguity of the undefined “all-of-society” approach, typically enshrined in the multi-stakeholder model. For all its claims of inclusiveness, this strategy is devoid of any ground rules, and continues to neglect the power imbalance across stakeholders, thereby opening the floodgates for self-interested private sector meddling in what is a grave matter of public policy, public health, and public governance.

¹<https://www.politico.com/news/2022/09/14/global-covid-pandemic-response-bill-gates-partners-00053969>

²<https://healthpolicy-watch.news/who-pandemic-treaty-negotiations/>.

Let us be clear about what this absence of safeguards can unleash. Actors and entities with industry affiliations attributed access and uniform space to observe and engage in the pandemic treaty process will have a potentially conflicting impetus to remain invested in these negotiations at dire odds with the interests of public health that should constitutionally drive the WHO and bring Member States to the table. On the one hand, entities representing the interests of pharmaceutical, medical technology, alcohol, food, healthcare, and digital corporations, for example—many of which have seen unprecedented increases in their profits during the pandemic—have vested interests in the approach governments take to address pandemics. On the other hand, several Global South nations that have been plunged into even deeper debt cycles during the pandemic, while they were trying to do their best to protect their people in a critical health emergency,^{3 4} potentially risk experiencing greater vulnerability to the power of money and influence of commercial interests during the negotiations process.

It is then worth noting that “reaffirming the principle of sovereignty of States Parties in addressing public health matters, notably pandemic prevention, preparedness, response and health systems recovery,”⁵ as outlined by the INB, will only remain an aspirational *preamble, and not the core substance of the pandemic treaty*, if the treaty space remains freely open and welcoming to a range of actors irreverent of their conflicts and profit motives—from trade associations to other similar institutional actors—that boast membership of and support from industrial enterprises with billions in annual profits. These entities have benefitted abundantly from a global pandemic of COVID-19’s magnitude, while putting the lives of millions of people at stake.^{6 7}

The CZD also does drastic disservice to what has already been learned from and experienced by the only other WHO treaty process based on Article 19 of the WHO Constitution, the Framework Convention of Tobacco Control (WHO FCTC),⁸ on how profit-making entities must be regulated, constantly monitored, and prevented from maligning a process that must strictly belong to the sovereign Member States. To safeguard against such measures, the WHO FCTC aims to protect tobacco control policies from the harmful influence of the tobacco industry.⁹ Specifically, Article 5.3 legally obligates Parties to the treaty “to protect their public health policies related to tobacco control from commercial and other vested interests of the tobacco industry.”¹⁰

We should not forget that the tobacco industry’s strategies include but are not limited to direct and indirect political lobbying and campaign contributions, financing of research, attempting to affect the course of regulatory and policy machinery, and engaging in social responsibility initiatives as part of public relations campaigns.¹¹ Acknowledging this, Article 5.3 of the WHO FCTC protects against the tobacco industry’s attempts to dilute and weaken effective and life-saving tobacco control legislation by calling for enactment and implementation of laws and policies aimed at preventing tobacco industry interference with tobacco control measures. Also, Article 5.3 provides governments and tobacco control advocates an important tool to ensure that public health is prioritized over the tobacco industry’s expansion.^{12 13} Such precedent must be adhered to by the INB to protect against industry interference, especially for those industries that have seemingly fleeced governments to consolidate monopolies during an unprecedented global public health crisis. Many of the commercial interests that seek to engage in the negotiations have expanded their monetary gains, and prevented or nullified the implementation of international law, such as waiving intellectual property rights during the pandemic, as demanded by India and South Africa¹⁴.

³<https://www.seattletimes.com/nation-world/in-secret-vaccine-contracts-with-nations-pfizer-took-hard-line-in-push-for-profit-report-says/>

⁴<https://healthpolicy-watch.news/what-about-debt-cancellation-to-prevent-future-pandemics/>

⁵Conceptual zero draft for the consideration of the Intergovernmental Negotiating Body at its third meeting, p.6

⁶<https://healthpolicy-watch.news/who-pandemic-treaty-negotiations/>

⁷<https://www.theguardian.com/business/2022/feb/08/pfizer-covid-vaccine-pill-profits-sales>

⁸<https://fctc.who.int/>

⁹https://www.ijhpm.com/article_4185_97546006dc6fe0bdc4dbe90d5e1740d2.pdf

¹⁰<https://fctc.who.int/>

¹¹https://escholarship.org/content/qt98w687x5/qt98w687x5_noSplash_3533b25fef1a148038d7e4deedbc4b75.pdf?tk=krmir2

¹²<https://www.tobaccofreekids.org/what-we-do/industry-watch/fctc-article>

¹³https://www.corporateaccountability.org/wp-content/uploads/2017/09/english_tobacco_5.3.pdf

¹⁴<https://www.thebureauinvestigates.com/stories/2022-11-10/who-killed-the-vaccine-waiver>, and also

<https://www.ifpma.org/resource-centre/pharmaceutical-industry-expresses-deep-disappointment-with-decision-on-waiving-intellectual-property-rights-adopted-at-the-world-trade-organization-ministerial-conference/>

In sum, it is clear that Article 5.3 of the WHO FCTC was built on foundational accountability principle. The same principle, *mutatis mutandis*, could and should guide some of the necessary provisions that INB and WHO can employ. As in the previous WHO treaty, strong safeguards must be established in order to advance public health-driven solutions centered on people's wellbeing, instead of opening up the institutional space to narrow and myopic profit motives and proliferation of industry interests¹⁵ in the name of pandemic prevention, preparedness, and response.

Our remarks also borrow from the very recent 'Joint civil society submission on establishing a United Nations Framework Convention on Climate Change (UNFCCC) Accountability Framework to protect against undue influence of polluting interests': recognizing the persistence of corporate interference—just as we witness in the case of the health-related private sector monopolies monetizing research seeded with taxpayers money. This statement firmly establishes that “climate action will always be inadequate if polluting interests are allowed to obstruct.”¹⁶ Such a framework provides key reference for relevant efforts being undertaken in other UN treaty spaces with the intent to advance safeguarding measures that can be interpreted, adapted, and promoted by the INB.

2. Missing transparency maximizes the risk of a few powerful interests being prioritized above public interest

Despite several mentions of advancing transparency, the substantive approach to make the treaty process transparent seems to have been overlooked. Although '*Article 14 Whole-of-government and other multi-sectoral actions*' propounds a collaborative process “with non-State actors, the private sector and civil society, through an all-encompassing whole-of-government, multistakeholder, multi-disciplinary and multilevel approach,” and acknowledges “social, environmental and economic determinants of health that contribute to the emergence and spread of pandemics,” there is no indication of how governments will ensure that people's voices and non-profit public interest groups are prioritized above that of the far more well-resourced, profit-motivated, and politically-powerful multiplicity of private sector entities.

What must be delineated is how the involvement of commercial enterprises, if at all, can uphold the basic WHO-embraced standards on transparency with the engagement of non-State actors. Not adequate and lacking in stronger justice-centered provisions, the WHO Framework of Engagement with Non-State Actors (WHO FENSA)¹⁷ endeavors to ensure that WHO's engagement with non-state actors, such as NGOs, private sector entities, philanthropic foundations, and academic institutions protects the WHO's work from potential risks of such engagement, such as conflicts of interest, reputational risks, and undue influence by the industry.¹⁸

The INB and the Member States should also draw from the WHO FCTC conflict-of-interest and accountability safeguards to inform the pandemic treaty. Also, it is worth reminding the INB of the Maximizing Transparency decision adopted during the eighth Conference of the Parties (COP) of that treaty in 2018.¹⁹ That decision requires that representatives to the sessions of the COP, its subsidiary bodies, and any other bodies established pursuant to the COP to indicate their observance of Article 5.3 of the WHO FCTC and their consideration of the Article 5.3 Guidelines, which is not to nominate delegates from the tobacco industry (including state-owned tobacco industries).²⁰ In addition, it was also decided that intergovernmental and nongovernmental organizations, the media, and members of the public be required to complete a Declaration of Interest form when submitting their accreditation to the meetings.²¹

Implementation of such transparency disclosures is essential to begin protecting multilateral policy procedures for the treaty mechanisms within UN bodies. It also enhances a culture that rightly asserts the public sector as a

¹⁵<https://link.springer.com/article/10.1057/s41301-021-00319-8>

¹⁶https://www.corporateaccountability.org/wp-content/uploads/2022/08/Joint-civil-society-submission-on-COI-Aug-17-2022_.pdf

¹⁷https://apps.who.int/gb/ebwha/pdf_files/wha69/a69_r10-en.pdf

¹⁸<https://link.springer.com/article/10.1057/s41301-021-00319-8>

¹⁹[https://fctc.who.int/publications/m/item/fctc-cop8\(12\)-maximizing-transparency-of-delegations-from-parties-and-observers-to-the-conference-of-the-parties-its-subsidiary-bodies-and-other-who-fctc-meetings](https://fctc.who.int/publications/m/item/fctc-cop8(12)-maximizing-transparency-of-delegations-from-parties-and-observers-to-the-conference-of-the-parties-its-subsidiary-bodies-and-other-who-fctc-meetings)

²⁰<https://link.springer.com/article/10.1057/s41301-021-00319-8#Fn20>

²¹<https://fctc.who.int/who-fctc/governance/declaration-of-interest>

primary and undisputed governance authority, with necessary independence and distance from the profit-driven entities over which it must have oversight to guarantee the public interest.

Akin to the omission of safeguards, the CZD also avoids in any substance the foundational importance of ensuring transparency around private sector engagement. The fact that transparency is referenced in some form at least 14 times is not in itself a guarantee that transparency will be explicitly practiced in the engagement of the private sector. Nor does ‘*Article 15 on Community engagement and whole-of-society actions,*’ in mentioning the private sector a multitude of times with a subsequent proposition to “promote, empower and strengthen the engagement/participation of communities to ensure their ownership of, and contribution to, community readiness and resilience, including public health and social measures,”²² establish any concrete means of ensuring transparency around the participation and influence of vested commercial interests.

This proposed engagement, which makes no meaningful or tactical distinction between civil society organizations, community representatives, and vested commercial interests, exemplifies the deeply concerning public-private partnership model enshrined in the treaty negotiation process. With the stakes high in the global health security agenda advanced by the pandemic treaty, the narrative of the CZD seems to reinforce existing power imbalances that have emerged from the challenges, especially related to funding, confronted by the WHO and other UN entities today, to the extent that one cannot help question how peoples and communities can possibly remain empowered, and in control of their health, social resources, and public systems. On this front, as the negotiations advance, civil society entities and communities can also benefit from practicing caution against being positioned as legitimizing the role for the private sector in treaty-making.

Especially troublesome is the anticipated role of the private sector in ‘*Article 18 on Sustainable and predictable financing,*’ in which “greater collaboration between the health, finance and private sectors, in support of primary health care and universal health coverage,”^{23 24} is proposed. This further elucidates the opaqueness around what this collaboration can indeed risk. It has been proven time and again that the private sector’s interference in and capture of public services and provisions don’t only produce profound inequity and policy distortions, they are also systematically ineffective and inefficient.²⁵ We cannot allow pandemic prevention, preparedness, and response to expand corporate impunity, with people ending up paying for it “with their lives, and their deaths.”²⁶

In conclusion:

Major structural modifications and additions will be required in the current CZD for it to provide the minimum enabling conditions for a serious negotiation on pandemic prevention, preparedness, and response. These conditions mostly pertain to the advancement of a global health security culture and to the likely governance fashioned around this discourse. Our concerns remain that this pandemic treaty negotiation will mimic the public-private partnership (PPP) governance that has increasingly pervaded global health in the last decades and characterized the mismanagement of COVID-19 globally. Given the enormity of the challenges we face in a world of polycrisis, we need a new regime, not a repeat of the one that failed us in preventing, preparing for, and responding to the current pandemic.

Co-authored by:

Ashka Naik, Corporate Accountability

Daniel Dorado, Corporate Accountability

Nicoletta Dentico, Society for International Development

²²Conceptual zero draft for the consideration of the Intergovernmental Negotiating Body at its third meeting, p.23

²³Conceptual zero draft for the consideration of the Intergovernmental Negotiating Body at its third meeting, p.25

²⁴http://www.world-psi.org/sites/default/files/documents/research/rapport_eng_56pages_a4_lr_0.pdf

²⁵<https://g2h2.org/posts/financialjustice/>

²⁶https://www.tni.org/files/publication-downloads/the_eu_and_the_corporate_impunity_nexus.pdf, p.4