



International Baby Food Action Network - IBFAN
Red internacional de grupos pro alimentación infantil
Réseau international des groupes d'action pour
l'alimentation infantile

Geneva Infant Feeding Association - GIFA

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Concerns regarding the proposed Framework of engagement with NSA

Discussion paper for the 68th WHA

Many decisions during the WHO Reform, including Decision WHA67 (14)¹ adopted by the 2014 World Health Assembly underlined the importance of an elaborating “**appropriate framework**” and stressed the need for “further consultations and discussions... on issues including **conflicts of interest and relations with the private sector.**”

Comprehensive, effective, conflict of interest policies which strike the delicate balance between under- and overregulation and which ensure transparency for and accountability towards the worlds people are an essential, but not the only measure to ensure that WHO and other public health actors can unequivocally work for ‘Health for All.’

What are usually key aims of UN relation/cooperation policies?

a/ **Protecting** the institution **from undue influences**

b/ **Ensuring the legitimacy** of the public organization (credibility and public trust)

We believe the draft Framework of engagement with NSAs (FENSA) for discussion at the 67th WHA does neither.

1/ It does not protect from undue influences of /by transnational corporations (TNCs), their business associations and important philanthropies. Instead it:

- **reasserts and legitimizes old channels of undue influence**

Example: the Framework contains a new **Official Relations policy** which, instead of reacting to long-standing calls to better distinguish between public-interest NGOs and business-interest NGOs and reassessing whether it was constitutional to accept business associations into Official Relations, the Framework proposes a wholesale admission of business interest organizations/associations and moreover philanthropies simply by classifying them as NSAs (para 49).

Furthermore, the Official Relations status is premised on the highly problematic conditionality that WHO must have a common, “mutually beneficial”, engagement with all “non-State actors”. This precondition builds a conflict of interest straight into WHO Official Relations which is likely to result into further shifting WHO’s agenda and work in the corporate and private donor interest.

Finally, the draft in the Para 49 continues to say “Official relations is a privilege that the Executive Board may grant to international business associations....[whose] aims and activities ...shall be in conformity with the spirit, purposes and principles of WHO’s constitution”. This

¹Cf. p.7 of A67/DIV/3, http://apps.who.int/gb/ebwha/pdf_files/WHA67/A67_DIV3-en.pdf?ua=1, emphasis added

essential precondition implicitly obscures the nature of the corporations which have the fiduciary mandate to work for profit-maximization.

- **creates/legitimizes new channels of undue industry influence** – As example, examine the interactions proposed in the Framework:
‘Participation’, provision of ‘resources’ (incl. personnel), ‘evidence’ creation and ‘advocacy’ are all problematic categories of interactions when it comes to interactions with TNCs. All of them are categories of high risk for undue industry influence and are usually considered as “at risk areas” for conflicts of interest which would need further debate.
- **gives false impression that the risks of interactions with TNCs and philanthropies, including conflicts of interest, are adequately addressed.**

For example, the **part on concept of conflicts (Col)** - which at the time of this analysis was still bracketed – still presents an incorrect conflict of interest concept. It continues conflating conflicts of interest – which refer to conflicts WITHIN an person or institution – with conflicts or divergences BETWEEN actors and their mandates/missions.

The link of the Col measures to the rest of the Framework, as well as to other relevant WHO and UN policies, is unclear and inconsistent. Moreover this part contains important gaps: e.g. there is no reference to whistleblower protection, the revolving door problematic, nor to the leadership’s ‘duty to create an organizational culture in which dealing with conflict of interest matters can be freely discussed and raised.’²

The part on **due diligence** and **risk management** is still ill-conceived and their link to a conflict of interest policy very unclear. There is a need to better distinguish between actors and look how to arrive at appropriate assessment and regulation of interaction. For example, it seems unwise to use of criteria which apply to specific interactions with corporate actors to interactions e.g. with small public-interest NGOs. It would create unnecessary administrative work and might outrule those public actors from engagement (for example, assessment of their “financial stability”).

See the box attached for a more detailed analysis of the conflict of interest section.

2/ if the Framework is accepted as proposed, **it will lead to the loss of credibility for WHO.**

One of the key reasons lies in the continued blurring of the nature of outside actors by lumping them together under the label NSAs. This leads to problematic assertions and policy suggestions which may undermine public trust that this effort is in the public interest. To appraise the risk to public credibility, it is helpful to replace the word NSA in the Framework’s general principles part by the word ‘TNCs’.

For example, para 6(g) (under discussion) would read: ‘WHO engagement with **transnational corporations** is guided by the following overarching principles:

“Any engagement [with TNCs] should be conducted on the basis of.... inclusiveness” [good democratic and evidence-based policy setting as a wholesale inclusive process?],
“accountability” [WHO accountable to TNCs?] “and mutual respect” [not arms-length distance and vigilance?]

In conclusion:

Public-interest NGOs and social movements have over the past 4 years shared with WHO Secretariat as well as with Member States sources of conflict of interest theory, organized briefings, and called on Member States to ensure that the Framework’s development will be informed by a technical

² OECD Guidelines for Managing Conflicts of Interest in the Public Service, 2003



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expert consultation, with civil society participation, on conflicts of interests within a larger framework on safeguarding this unique global public health institution from undue influences.

We are thus preoccupied by the fact that the draft presented for the upcoming WHA continues to fall short of a policy that can effectively safeguard **the integrity, independence, credibility and reputation of WHO** (the principles contained in the Framework).

We understand the political process. We are also well aware that WHO has been increasingly faced with situations where its own financial interests have been in conflict with the pursuit of its constitutional public health mandate and functions. This is due to chronically inadequate levels of assessed contributions and also because WHO has been put in the position of having to compete for voluntary contributions with a growing number of public-private multi-stakeholder initiatives in the global health arena.

Furthermore, WHO has recently reached the point of dependency on one particular philanthropic foundation which promotes, alongside with WHO's major donor states, the multi-stakeholder model, and whose access to its governing bodies WHO's leadership seems to feel obliged to facilitate through the draft Official Relations Policy. Finally, by also re-legitimizing access of business association to its governing bodies WHO seems to be hopeful of attracting funding contributions from the commercial sector.

Reasonable persons may see the present draft Framework a result of unmanaged grave institutional conflicts of interest within WHO, as well as of pressures by external interests which exercise their influence on WHO. Therefore, while we present here a rather 'technical' analysis of the Conflicts of Interest section, we do not believe that the solution lies in 'fixing' the draft during the World Health Assembly but in reinitiating a broader political debate which will determine the future of WHO.

We call on Member States to:

- **consider putting on hold their negotiations over the wording in the present draft;** and to instead
- **evaluate the process, and at the upcoming WHA, re-open, a transparent political and policy debate on how to clarify concepts, obtain missing evidence, and do an in-depth review of the adequacy of existing relevant WHO policies** with the overarching aim to ensure WHO emerges from this process as an the lead agency in public health able to fulfil its constitutional mandate and prime functions.

This debate would also need to include discussion on the structural causes of the crisis in global health governance. There is need to debate on how to best assure adequate core funding of WHO as the Ebola crisis showed clearly how prime functions of WHO had been gutted by reliance on 'voluntary' funding. WHO's budget is, after all, only a quarter of the budget of the Atlanta based CDC.³

Only such process can guarantee WHO's role as the leading authority in international public health, and not a weakened institution, relegated to play a limited role in a 'stake-holderized' global health architecture.

³ According Professor Laurence O. Gostin, Conference "Reforming WHO", Zurich University, 6 May 2015 (figure to be confirmed)

BOX: Review of the section on conflicts of interest contained in the A68/5 Framework of Engagement with non-state actors

We focus on the section on conflicts of interest as this issue has been central to the governing bodies' debate and was still entirely in brackets at the writing of this analysis.

Para 23. - agreed text in green:

Presently, the draft section is incorrect and unhelpful as it continues to contain a wrong conceptualisation of 'conflicts of interest' and blurs the distinction between the legal concept of 'conflicts of interests' and 'conflicting interest' between actors.

Explanation: The conflict of interest concept refers to a conflict WITHIN a person or an institution.

For example, a **Report by the US Institute of Medicine** defined "Institutional conflicts of interest" those situations, "when an institution's own financial interest or those of its senior officials pose risks to the integrity of the institution's primary interests and missions." It warned "If they are not properly identified and managed, institutional conflicts can undermine the work and reputation of an entire institution, including employees or members who are themselves strictly avoiding individual conflicts of interest."⁴

In WHO's case a major institutional conflict of interest would be the conflict between its duty to work towards fulfilment of its constitutional mandate and prime functions (primary interest) and, for example, its wish to secure corporate funding (secondary interest). This carries the risk that WHO's commitment to its "primary interest" may be undermined. WHO may, for example, become reluctant to advocate for peoples' health as a human right, to assist with the development of public interest policies - including regulation of problematic corporate practices - when faced with resistance of corporate funders, or fail to protect public policy spaces from commercial influences.

Institutional conflict of interest safeguards have the objective to ensure that the primary interest of an institution is not undermined by its secondary interests. In other words, their aim is to protect the integrity, independence and trustworthiness of and public trust in public officials and institutions.

The CoI concept does not apply to conflicts BETWEEN institutions and outside actors⁵. For such situations terms such as 'conflicting/diverging mandate', 'conflicting interest' or simply 'conflict' can be used. "Vested interests" of actors who do not have a public interest mandate often create such conflicts - which may need to be addressed in political debates and/or by a vigilant identification of stated/hidden conflicting agenda and undue conditionalities.

Para 24 –all text in green:

This paragraph has the same shortcomings as the previous on.

Explanation: Firstly, the sentence "all institutions have multiple interests" banalises and confuses the issue.

Secondly, it mixes converging (diverging) interests and conflicting interests with conflicts of interest. Were it to be redrafted to correspond with the accepted definitions of institutional conflicts of interest, it might read:

"An institutional conflict of interest is a situation where WHO's primary interest as defined by its Constitution may be unduly influenced by secondary interests of WHO or its senior officials. For example, a situation where WHO's interest in receiving corporate funding affects, or may

⁴ Lo, B. and M. Field, editors. *Institute of Medicine (US) Committee on Conflict of Interest in Medical Research, Education and Practice*, Eds. (2009). *Conflict of interest in medical research, education and practice*. Washington DC, National Academics Press, p. 14-15 <http://www.ncbi.nlm.nih.gov/books/NBK22942/>

⁵ See Peters, A. L. Handschin. eds. (2012). *Conflicts of interest in global, public and corporate governance*. Cambridge & New York, Cambridge University Press.



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reasonably be perceived to affect, the integrity, independence, credibility and reputation of WHO" (the principles stipulated in the Framework⁶).

Para 25 – all text in green:

In addition to the confusing use of the 'conflicting interests' concept, this para leaves out conceptually some important core elements of adequate conflicts of interest safeguards: identification of Col, disclosure, assessment of their seriousness, and appropriate resolution of Col situations, which as much as possible should be their avoidance, and if not possible, their adequate and transparent management. Instead, the para focuses only on management of Col.

Para 26 – text in grey, proposed by the Chairperson

While we much appreciate the Chairperson's leadership in this complex process and the attempt to come to resolution in this critical section of the document, we need to point out that the proposed text reflects unfortunately takes on the same incorrect notion of conflicting interests between WHO and outside actors.

For WHO the most important institutional conflicts of interest situations are those where WHO's own financial interests conflict with WHO's pursuit of its public health mandate and its functions and refer to our explanations above.

⁶ Some theoreticians refer instead to "trustworthiness" and "public trust", e.g. Rose, S. L. (2013). "Patient Advocacy Organizations: Institutional Conflicts of Interest, Trust, and Trustworthiness." *JLME Special Issue*: 680-687. Marks, J. H. (2014). "Toward a Systemic Ethics of Public-Private Partnerships Related to Food and Health." *Kennedy Institute of Ethics Journal* 24(3)