

Safeguarding against possible conflicts of interest in nutrition programmes:

“Approach for the prevention and management of conflicts of interest in the policy development and implementation of nutrition programmes at country level” (3 Drafts)

Comments by Geneva Infant Feeding Association

I would like to thank the WHO Nutrition team for sharing with me the set of 3 drafts for comments.

I acknowledge all the efforts which went into their development. I have to, however, conclude that as long as the *Approach for the prevention and management of conflicts of interest in the policy development and implementation of nutrition programmes at country level* remains aligned with the path taken by the WHO *Framework for engagement with non-state actors* (FENSA), its stated aim is unlikely to be achieved. Instead, it will risk to weaken any existing safeguards at national level and promote development of measures that increase rather than reduce risks of undue influence by corporate actors and venture philanthropies on policy decisions and programme implementation. In my comments I am taking the opportunity to re-emphasize some of these risks. However, I am intentionally not providing any detailed comments since I do not wish my name to be associated with or used to legitimize the current process and its outcomes.

The 3 drafts confirm concerns I had already expressed as one of the external consultants participating at the WHO technical consultation (TC) “Addressing and managing conflicts of interest in the planning and delivery of nutrition programmes at country level”, Geneva, 8-9 October 2015. I was worried that the poor conceptualisation of conflicts of interest (Col) in some of the key debates namely FENSA, Scaling up Nutrition - SUN, ICN2, UN Decade of Action on Nutrition, and resulting documents would prevail in the development of this Col guidance on nutrition. (Some of these concerns are stated in the [TC report](#)ⁱ, 2016, pg.4-6 and 9-10). Seeing that the WHO Concept note regarding the follow up to the TC clearly stated that the proposed approach to be developed was to be consistent and in line with WHO’s overall policies and practices including, inter alia, FENSA, I decided with regret to disengage from the follow up process.

This difficult decision was based on my experience from the 6-year FENSA policy process as a member of IBFAN delegation. FENSA had not followed the path of a due process and was not fully informed by Col experts. As a result, FENSA, adopted as WHO policy in 2016, reflects inaccurate Col concepts which mirror those put forward by multistakeholder initiatives such as SUN. [Concerns voiced by IBFAN throughout the FENSA process](#),ⁱⁱ calling for reevaluation of the Framework, for an expert and transparent consultation on conflicts of interest to inform the process, to clarify concepts, and to obtain missing evidence, were not addressed.

The outcome of the FENSA process gave me an indication that conceptualisation, which served the further entrenchment of the MSI/PPP model and disregards the risks this model brings to human rights and democratic policy processes in health and nutrition, was likely to prevail in the CoI nutrition guidance. The 3 drafts released for a review confirm this concern. As some valuable sections and wording in the text indicate, they seem to result of a tension between an effort to try and safeguard policy and programming endeavours in nutrition and a simultaneous reaffirmation of the MSI/PPP paradigm. However, this paradigm has CoI intrinsically built in and erodes decision-making in public interest. Consequently all three draft documents contain the same major flaw of FENSA.

Redefining of the CoI concept to serve the MSI/PPP paradigm can lead only towards further undermining rather than much needed strengthening of CoI safeguards, which should defend and maintain integrity, independence and credibility of public actors, in this case governments and their agencies as well as persons in a position of trust (referred in the drafts as „non-state individuals“). In developing the *“Approach for the prevention and management of conflicts of interest in the policy development and implementation of nutrition programmes at country level”* in this manner, WHO misses the opportunity to provide governments with a correct and effective guidance.

I would also like to point one serious methodological flaw. It is revealed by the list of references which does not contain any reference by authors recognized as legal experts on CoI and by academics with vast experience in working critically on these issues from a public-interest centered perspective. Some of these experts attended the TC and raised concerns over redefinition of the CoI concept as well as over „normalisation“ of CoI, particularly through multistakeholder initiatives (MSI) and Public-private partnerships (PPPs), which, they argued, should not be promoted as the paradigm or default mechanism in public health interventions.

As reflected in the report (pg. 6), from which I quote here, these CoI experts emphasized at the TC:

„There is a need to explain clearly the differences between “conflicts of interest” and what some conflicts of interest experts have suggested should rather be called “conflicting” or “diverging” interests. Conflicts of interest refer to conflicts “within” a person or institution—that is, between their primary interest and other, secondary, interest – and not to conflicts between actors who have diverging interests or fiduciary duties.... It was emphasized that corporations employ strategies of influence and that we should make clear to Member States that the regulation of conflicts of interest is an essential but not the only component in the strategies that governments should employ to address this influence. Governments need comprehensive strategies to address industry influence in order to protect their independence, integrity and credibility.“

This distinction is crucial for the correct conceptualisation of Col and for formulation of effective safeguards. FENSA failed to make such a distinction and so do now the 3 drafts (see e.g. pg 3/point 10 in the Discussion Paper) .

Finally, I would like to raise a specific concern, related to my area of expertise: the infant and young child feeding area. This area has been to some degree safeguarded from Col by the International Code of Marketing of Breastmilk Substitutes and subsequent relevant WHA resolutions and by the Global strategy on infant and young child feeding, in particular its para 44. This para defines clearly the two and only appropriate roles for the infant food companies to play in support of breastfeeding and young child feeding: full compliance with the International Code and meeting standards of Codex Alimentarius. As I stated at the TC (pg. 9-10), these safeguards are not always known or respected and enforced and companies have been always trying to overstep the roles designated by the World Health Assembly. Instead, they bring into play the powerfully promoted MSI and PPP model to position themselves as responsible 'corporate citizens' who should be seen as 'a part of the solution' - not a party to be regulated. Companies can use these positions to obstruct national Code implementation as well as to influence global and national policy agendas to their political and economic advantage. (see e.g Executive summary of the [*Breaking the rules, stretching the rules 2017*](#),ⁱⁱⁱ a compilation of marketing practices from around the world that violate the International Code).

Transgressions of rules have been also facilitated by initiatives promoting multistakeholder approaches. One such recent initiative is the [Bill and Melinda Gates Foundation's multistakeholder initiative](#) ^{iv}*Global Monitoring Mechanism-GMM*. IBFAN highlighted the inherent Col of this initiative as it includes the party to be monitored for compliance with the International Code into the process. In the initiative's Breast Milk Substitutes Situation Assessment Report (not yet made publically available) IBFAN stated in its Note of dissent (available on request) that GMM defies the well accepted Col principle that „no one should be a judge in his own cause“.

Final conclusion: Were the *Approach for the prevention and management of conflicts of interest in the policy development and implementation of nutrition programmes at country level* developed based on accepted principles of Col, it could provide support to governments to build on existing safeguards in the infant and young child feeding area at national level. Unfortunately, the current set of drafts does not provide such guarantees. It takes the path of FENSA and thus risks to weaken any existing safeguards at national level and/or promote development of measures that increase rather than reduce risks of undue influence by corporate actors and venture philanthropies on policy/decision-making and programme implementation.

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ⁱ <http://www.who.int/nutrition/publications/COI-report/en/>

ⁱⁱ <http://www.policyforum.net/a-fox-building-a-chicken-coop/>

ⁱⁱⁱ <https://www.ibfan-icdc.org/publications-for-sale/>

^{iv} http://merid.org/en/Content/Projects/Marketing_of_Breast-Milk_Substitutes_and_Infant_Nutrition_and_Health.aspx