



Baby Milk Action/IBFAN UK comments to WHO's web-based consultation on the *First Draft Report of the WHO Independent High Level Commission on Non Communicable Diseases.*

16th May 2018

As one of WHO's longest-standing partners that has worked with WHO to protect child health since the late 1970s, we appreciate the opportunity to comment on this draft report. Since the comments we submitted in February are relevant to this response and since (despite our request) they were not posted on WHO's website, they are included at the end of this submission.¹

IBFAN has submitted numerous comments regarding WHO's work on NCDs, highlighting the role of breastfeeding and infant and young child feeding in the prevention of NCDs and the need to safeguard WHO's interactions with the private sector. We attended the 1st UN General Assembly on NCDs, contributed to the development of the Political Declaration and launched the Conflict of Interest Coalition at this event, demonstrating the concern of 161 NGOs to keep policy setting free from commercial influence.²

Our aim has been to protect WHO's independence, integrity and trustworthiness in order to maintain its capacity to fulfil its constitutional mandate and three core functions, to:

- act as the directing and coordinating authority in international health work (Art.2a)
- propose conventions, agreements and regulations.... (Art.2k)
- assist in developing an informed public opinion among all peoples on matters of health (Art. 2r)

Throughout the many debates about the role of Non State Actors, Member States have given consistent reassurances that WHO's policy-setting functions would be protected from commercial influence. We were therefore concerned about the status of this new Commission in relation to that of Member States, the future direction of WHO's work in NCDs and WHO's recommendations to Member States. In February we raised specific concerns about the 'advisory' role of three proposed Commissioners, in particular Arnaud Bernaert, of the World Economic Forum, a body that represents some of the worlds largest corporations whose marketing practices are known to damage health and the [environment](#), and who are actively involved in [deforestation](#), mono-cropping, [land and sea grabbing](#) and risky technologies – all of which have an impact on NCDs and the right to food.

We are worried and disappointed that our concerns where not acted upon and believe that the draft Report provides clear evidence that there has indeed been commercial influence on the Commission. For WHO to allow WEF to act as an 'advisor' in this way seems to us a derogation of duty and we believe that the report and many of its assumptions and recommendations provide ample evidence of the risks of this decision. We strongly urge a reconsideration of its whole

¹ *Conflicts of Interest concerns about three members of WHO's new High-level Commission on NCDs*

² <http://coicoalition.blogspot.co.uk>

approach before it is released as a WHO recommendation that is clearly intended to influence Member States actions and decisions.

Examples of the report's clear bias towards industry and recommendations that will lead to an undermining and delay of effective strategies to protect public health.

While the report contains some useful observations, these are totally undermined by the claims made in paras 36-41 and Recommendation 2. This section promotes Public Private Partnerships and other business friendly strategies as being essential to an effective NCD response with little or no acknowledgement of their risks, the lack of evidence for their effectiveness³ or the fact that involvement of the private sector in policy setting is inappropriate and can sabotage government efforts to protect human rights to health and survival.

Para 30 outlines why countries are lagging behind but puts all the blame on governments for a 'lack of political will' to overcome market forces. The food industry is absolved of all responsibility for its many and varied lobbying tactics that are known to undermine efforts to regulate their activities.⁴

Little or no mention is made of the impact of trade or the need to integrate concerns about NCDs into the work of Codex Alimentarius and to address the lack of conflicts of interest safeguards in this body. Food businesses and their front groups are disproportionately and inappropriately represented at Codex meetings (often sitting on government delegations and sometimes even leading them).⁵

No mention is made of the importance of breastfeeding and optimal infant and young child feeding in the prevention of NCDs.

Para 36: suggests that the 2011 Political Declaration on NCDs calls for engagement with the Private sector, but makes no mention of Declaration's call for such engagement to be 'appropriate'. No mention is made of WHO's frequent call for the avoidance of conflicts of interest – apart from a brief mention of 'management of conflicts of interest' within a mixed bag of principles in Para 32.⁶

Para 37 and 38: The rationale given for the establishment of a "fresh working relationship" with the food and related industries is the "limited progress" made so far. Instead the report highlights the progress made by the private sector in promoting products that are loosely defined as being 'consistent with a healthy diet.' The only identified problem is that these products are not more 'affordable, accessible and available'. No mention is made of the many countries that have brought in effective regulations to control harmful marketing in the face of opposition from the food industry - nor any mention of WHO's recommendation to avoid ultra-processed foods and to encourage instead culturally appropriate, bio-diverse and minimally processed locally produced foods.

Para 38 makes the unsubstantiated claim that "all countries" will benefit from "public private partnerships". The report fails to mention that 'partnerships' are, by definition, arrangements for 'shared governance' to achieve 'shared goals', that shared decision-making is their single most unifying feature, that the term 'Partnership' implies 'respect, trust, shared benefits' and that with the 'image transfer' gained from WHO, it has strong emotional and financial value, especially for corporations whose marketing practices damage health, the environment and human rights.

³ What can we learn from collaborations between public health and the food and drinks industry? UK Health Forum, 2018. http://www.babymilkaction.org/archives/16835_shorturl.at/lmnrj

⁴ There are many examples – the following on one that relates to infant feeding: *Interference in public health policy: examples of how the baby food industry uses tobacco industry tactics.* World Nutrition, [S.l.], v. 8, n. 2, p. 288-310, dec. 2017. ISSN 2041 9775.

<https://worldnutritionjournal.org/index.php/wn/article/view/155>

⁵ French and US Trade delegations put child health at risk, IBFAN Press Release, Dec 2017 <http://www.babymilkaction.org/archives/15887>

⁶ There are eight WHA Resolutions on infant and young child feeding and the Global Strategy on Diet Physical Activity and Health that specifically call for avoidance of conflicts of interest and commercial influence. <http://www.babymilkaction.org/conflicts-of-interest>

IBFAN's experience with Multi-Stakeholder Platforms in the European context has identified many problems.

For example:

- consensus cannot be reached on the most effective policies such as the **regulation of marketing**;
- there is a 'lowering of the bar' and emphasis on small incremental changes, **voluntary initiatives, self-regulation and self-monitoring** (according to industry's own criteria);
- weak industry 'Codes of Conduct' with no legal power are promoted as adequate 'governance';
- industry-funded 'lifestyle' educational activities predominate, blurring the boundaries between marketing and education and providing 'cover' for ongoing irresponsible marketing.
- Meanwhile the ongoing pressure to form partnerships with the private sector threatens the independence and watchdog role of the civil society organizations.

Para 39 suggests that governments should employ *'their regulatory and legislative powers to protect the population'* only *'when engagement with the private sector fails.'* This is a clear delaying tactic. No mention is made of States' Human Rights obligations, outlined in CRC General Comment No 16, regarding the impact of the business sector on children's rights and that States are required to *'implement and enforce internationally agreed standards concerning children's rights, health and business, including [...] the International Code of Marketing of Breast-milk Substitutes and relevant subsequent World Health Assembly resolutions'*.⁷

Para 41: Extols the benefits of technological curative approaches to NCDs, with no mention of the risks of these approaches and how over-emphasis on such technologies can divert attention from essential primary health care, preventive approaches and attention to the precautionary principle.

Submission sent in February 2018

Baby Milk Action/IBFAN UK submission to WHO's two-week consultation on its proposed NCD Commission.

I am writing on behalf of Baby Milk Action/IBFAN UK regarding our concerns about three of the proposed Commissioners for WHO's Independent Global High-level Commission on NCDs.

As one of WHO's longest-standing public interest partners, IBFAN places great value on WHO's Core constitutional norm-setting functions and its independence, integrity and trustworthiness. With this in mind we respectfully urge WHO to ensure that the appointments and terms of reference for this Commission safeguard WHO's core constitutional functions:

- as the directing and coordinating authority in international health work (Art.2a);
- its mandate to propose conventions, agreements and regulations (Art.2k);

Our comments relate to the fact that the Commission has an advisory role.

Arnaud Bernaert: IBFAN's concern relates to Mr Bernaert's role as Senior Director of Global Health and Healthcare of the World Economic Forum (WEF). WEF members include some of the world's largest corporations whose marketing practices are known to damage health and the environment, and who are actively involved in deforestation, mono-cropping, land and sea grabbing and risky technologies.

⁷ <http://www.ohchr.org/en/HRBodies/CRC/Pages/CRCIndex.aspx>

WEF and its members are not benign bystanders in relation to UN policies. Indeed WEF's *Global Redesign Initiative*, launched in 2010, proposes that issues are *taken off* the agenda of the UN system to be addressed instead by '*plurilateral, often multi-stakeholder, coalitions of the willing and the able.*' The GRI envisages a world *managed* by a coalition of multinational corporations, nation states (including through the UN System) and select civil society organisations.

Since 2009 when WHO established the short-lived NCDNet, IBFAN has opposed proposals that WEF should have any advisory role in relation to WHO. While WEF or its members may act as multipliers/disseminators of WHO recommendations – and certainly have access to vast amounts of information that policy makers might find useful – we believe that WHO would be reneging on its constitutional mandate and would set a bad model for Member States, if it was to go further and to allow a representative of WEF to have the *advisory role* of Commissioner on any public health policy matter. Throughout the many debates about the role of Non State Actors, Member States have given consistent reassurances that WHO's policy-setting functions would be protected from commercial influence. It should be among WHO's highest priorities to ensure that this is the case.

WHO Draft Global Programme of Work (Rev 2) Para 78: *"At the same time WHO sets norms and standards which differentiates it from these other actors in global health. WHO's Framework of Engagement with Non-State Actors provides the guidance needed to engage in partnerships with all types of non-State actors while maintaining the Organization's integrity and independence from interests detrimental to health".* **111.** *"... At the same time, WHO must protect its work from conflict of interest, reputational risks, and undue influence."* **FENSA Para 4:** *"... This requires a robust framework that enables engagement and serves also as an instrument to identify the risks, balancing them against the expected benefits, while protecting and preserving WHO's integrity, reputation and public health mandate."*

An additional concern is Mr Berbaert's former role (until 2014) as Senior Vice-President of Philips Healthcare in charge of global strategy, business development. Philips manufactures medical equipment and a range of other products, including baby feeding bottles that are covered by the scope of *International Code of Marketing of Breastmilk Substitutes* and subsequent relevant WHA Resolutions. Throughout Mr Berbaert's time at Philips, the company marketed these products in ways that are in violation of that Code. Philips currently claims to be the *"#1 brand recommended by mums worldwide"* [1]

Dr Sania Nishtar, Former Federal Minister, Pakistan, Founding President, Heartfile. While we acknowledge and appreciate the areas where our advocacy aims are in line, our concern about Dr Nishtar's appointment as Co-Chair of the Commission relates to an article published in the medical journal, the *Lancet* (Vol 390 October 21, 2017): *The NCDs Cooperative: a call to action.* In this article Dr Nishtar called for the setting up of an *"international multistakeholder agency called The NCDs Cooperative..."* stating that *"WHO's mandate and governance structure may preclude it from leading and hosting a multisectoral public-private partnership."* The clear implication is that WHO's conflict of interest safeguards – inadequate as we believe them to be – are an obstacle to progress that should be bypassed. Surely the role of all the Commissioners should be to uphold WHO policy and help WHO make recommendations that are fully in line?

Sadly Dr Nishtar's article failed to provide evidence of the efficacy of public private partnerships (PPPs) or highlight their known risks in relation to NCD prevention and other threats to global health. It is worth noting that since 2003 OECD Guidelines *'Managing conflict of interest in the public service'* have identified PPPs and hybrid entities as particular *"at risk areas"* for conflicts of interest.[2]

We hope that the new Commission will help governments remain in the drivers seat when tackling NCDs. It could encourage them to have clear assessments of their national situations based on hard data, with goals, a clear strategy, and careful consideration of whether and what role private sector should play in its implementation. Pretending that it is easy or feasible to find *'Common ground'* with corporations – especially on regulatory issues – will not be helpful.

Katie Dain, CEO NCD Alliance, Co-Chair, WHO Civil Society Working Group for the third High-level Meeting on NCDs. We are concerned about the proposal to have the NCD Alliance represent civil society on this Commission and Co-chair the Civil Society Working Group. Our concern relates to the funding of the NCD Alliance. The NCDa was established by a US\$1 million grant from the world's largest medical technology company (Medtronic) and according to the most recent available evidence, we understand that nearly 50% of its funding is derived from other pharmaceutical companies (e.g., Novo Nordisk, Sanofi, Lilly, and Merck). All these companies are directly subject to WHO Guidance to national governments. They all have a clear financial incentive to influence WHO policies, to favour 'treatment' rather than 'prevention' while undermining efforts to bring in regulations that affect their bottom line. NCDa's non-industry members include the World Heart Federation and the International Diabetes Federation, entities that are also substantially funded by pharmaceutical companies.

For all the above reasons, and while we acknowledge and appreciate the areas where our advocacy aims are currently in line, we cannot support the proposal that NCDa should represent Civil Society on this Commission. Like many public interest NGOs, we have made the decision to refuse corporate funding and our advocacy in relation to public private partnerships and the involvement of corporations differs to that of NCDa in several key areas.

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