How Conflicts of Interest are being redefined and why this matters

Patti Rundall, IBFAN
Geneva Global Health Hub G2H2
GENEVA, ECUMENICAL CENTRE, Friday 19 JANUARY 2018

WHO GOVERNANCE AND CIVIL SOCIETY ENGAGEMENT:
THE CONVERSATION CONTINUE
Commericiogenic malnutrition
1981 – the International Code – the first tool to tackle marketing
“In less developed countries, the best form of promoting baby food formulas may well be the clinics which the company sponsors”

Nestlé in Developing countries 1970
“The secret of success is sincerity. Once you can fake that you’ve got it made”

Jean Giraudoux (1882-1944)
Industry repositions itself

• Since 1981 the US has supported industry, opposing the Code’s adoption, especially as a regulation.
• The industry has since tried to convince governments that international codes, legally-binding regulations or conventions are not necessary.
• The aim has been, and still is, to be seen as 'socially responsible' and willing to self-regulate through voluntary codes.
Leaning from each other: the tobacco playbook

https://worldnutritionjournal.org/index.php/wn/article/view/155
'the infant formula experience has put back the multinational cause by 8-10 years...'

The International Tobacco Information Center (INFOTAB) 1981
Conflicts of Interest: one of IBFAN’s key concerns
Safeguarding WHO’s Constitutional Core functions – as a norm-setting body

• To act as the directing and coordinating authority in international health work (Art.2a)
• To propose conventions, agreements and regulations.... (Art.2k)
• To assist in developing an informed public opinion among all peoples on matters of health (Art. 2r)
Conflicts of Interest: a relatively new legal concept

• While some describe CoI regulations for the UN system as being still in their “infancy” there has been a «clear, agreed upon, meaning in both law and public policy for a long time»
  - Prof. Marc Rodwin, Journal of Health Law and Policy

• Indeed the ‘spirit’ of CoI is known to everybody and the idea behind the CoI concept and how to adequately address it has been enshrined in popular sayings, religious parables, stories and fairy tales for centuries!
• 1996: 1st WHA Resolution on COI (WHA 49.15)
So what is a conflict of interest?

- The “spirit” of conflicts of interest
- Conceptualisation by lawyers
  CoI and fiduciary law
- CoI relate e.g. to professionals who are, or can be conceptualised, in a *fiduciary (trust) relationship*: judges; public officials & civil servants; more recently: physicians etc.

- Fides (latin) means trust, faith, confidence...

Ref: J. Richter, “Understanding conflicts of interests to safeguard democratic health and nutrition governance,” IBFAN-GIFA 2016
Fiduciary (trust) relationship

- **Fiduciaries (the trust-takers)** decide and/or act
- on our (the trust-givers) behalf
- their decisions are important for us but we cannot check well on their decisions
- The ‘trust givers’ must be able to trust in their decisions
Two broad categories of CoI (not mutually exclusive)

- «Conflicts between an individual’s obligations and their financial self-interest or other self-interest» (e.g. gifts from corporations)
- «Conflicts arising from an individual’s conflicting or divided loyalties, or dual roles or duties»

Rodwin, forthcoming 2018
"Institutional conflicts of interest arise when an institution's own financial interests ... pose risks to the integrity of the institution's primary interests and missions.”
e.g. Conflicting loyalty Col Peoples’ perception

«One cannot serve two masters»
Framework of Engagement with Non State Actors (FENSA), Global Programme of Work (GPW)
Conflicts of Interest in Nutrition

All share the same problematic COI definitions, promoting PPPs

See List of IBFAN statements
WHO’s COI definitions do not conform to standard legal practice

- The definitions used by WHO in its approach to Conflicts of Interest mirror the weaknesses in FENSA and the understanding of CoI in SUN’s Ethical Framework:
  - they confuse conflicts of interest *within* an institution or person with conflicts *between* actors who have diverging or fiduciary duties.
  - The muddled definitions divert attention away from conflicts that exist *within* public actors, between their mandates and prime functions and their secondary interest to be adequately funded.

that “the entire FENSA fails to address how WHO should appropriately approach public-private hybrid entities that undoubtedly create avenues for undue influence on policy--making”

that OECD Guidelines Managing conflict of interest in the public service see public-private partnerships, sponsorships and lobbying as particular “at risk areas” for conflicts of interest.

http://www.oecd.org/gov/ethics/oecdguidelinesformanagingconflictofinterestinthepublicservice.htm
• Why does WHO not refer to the OECD Guidelines Managing conflict of interest in the public service stated already in 2003 that sponsorship and public-private partnerships constitute particular “at risk areas” for conflicts of interest?

• For links to critiques of the Global Programme of Work and COI Tools see:
  • http://www.babymilkaction.org/consultations
• Excerpts from the problematic WHO documents.
1: Safeguarding against possible COI in nutrition programmes (EB 142/23)

- This paragraph 10 and the following paragraph 11, 12, 13 continue using and building on a definition of conflicts of interest (CoI) that is straying from the traditional legal concept of conflict of interest and thus from its original legal meaning.

- “According to standard legal usage”, explains Rodwin, “a conflict of interest arises whenever activities or relationships compromise loyalty or independent judgment of and individual who is obligated to serve a party or perform certain roles”.

- The definitions presented in para 10 and 11 of the draft EB 142/23 are – following on FENSA example - attempting to redefine conflicts of interest.


2 FENSA: how it describes the risks of engagement:

- **FENSA Para 7.** WHO’s engagement with non-State actors can involve risks which need to be effectively managed and, where appropriate, avoided. Risks relate inter alia to the occurrence in particular of the following:
  - (a) conflicts of interest;
  - (b) undue or improper influence exercised by a non-State actor on WHO’s work, especially in, but not limited to, policies, norms and standard setting;¹
  - (c) a negative impact on WHO’s integrity, independence, credibility and reputation; and public health mandate;
  - (d) the engagement being primarily used to serve the interests of the non-State actor concerned with limited or no benefits for WHO and public health;
  - (e) the engagement conferring an endorsement of the non-State actor’s name, brand, product, views or activity;²
  - (f) the whitewashing of a non-State actor’s image through an engagement with WHO;
  - (g) a competitive advantage for a non-State actor.
2: FENSA Para 4 is open to interpretation:

- Does FENSA enable PPPs or safeguard WHO? With a redefined COI then it becomes easier to use FENSA as an ‘enabler’.

- Para 4 .. In order to be able to strengthen its engagement with non-State actors for the benefit and interest of global public health, WHO needs simultaneously to strengthen its management of the associated potential risks. 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.
3 Draft 13th General Programme of Work (GPW)

- The draft GPW changed at the January 2018 Executive Board meeting but still contains a dozen worrying references to the benefits of private sector engagement with only a couple of safeguards against commercial influence that NGOs and others called for, including undoing the freeze on Member States Assessed contributions so that WHO would not have to reply on voluntary funding:

- **Para 111.** WHO can only accomplish the ambitious goals of GPW 13 with partners from all sectors including civil society and the private sector. At the same time, WHO must protect its work from conflict of interest, reputational risks, and undue influence.

- **Para 129.** more flexible financing will be critical. The quality of funds is almost as important as their quantity. The Director-General has asked Member States to unearmark their contributions. This is a sign of trust and enables management to deliver. Increasing assessed contributions would also give WHO greater independence.
Why is the idea of full alignment of WHO GPW with the SDGs problematic?
We need to ask ...

- Is the Constitution of a UN agency the same as an ‘agenda’?
- Is there anything in the SDGs that justifies turning WHO into just one actor, a “humble catalyst” in an “ecosystem of partnerships.”
Goal No 17 Partnership for Development

WHO refers to SDG No 17 as a **cross-cutting goal** on the means of implementation that is relevant to all the others. It covers financing, partnership, technology assessment and data, monitoring and accountability.


Para 21 Health and the 2030 Agenda for Sustainable Development, WHO A69/15 April 2016:
17.16. Enhance the **global partnership** for sustainable development, complemented by **multi-stakeholder partnerships** that mobilize and share knowledge, expertise... and **financial resources** to support the achievement of sustainable development goals in all countries, in particular developing countries.

17.17. Encourage and promote ... **public-private partnerships**...

https://sustainabledevelopment.un.org/sdg17
SDG Action Sheet 2016 tells citizens what actions they can take to promote sustainable development:

• **Multistakeholder partnerships [MSPs]** will be **crucial** to ... accelerate progress in achieving the Goals

• Encourage your governments to get partner with businesses for the implementation of the SDGs

• **SDG 2030 Agenda**: No real definition of **MSP** and no mention of **COI**.
Why this matters

• Without effective COI safeguards the SDGs could fundamentally change the global health and nutrition governance structure and threaten WHO’s capacity to fulfill its unique constitutional core functions.

• It could affect WHO’s role in proposing health conventions and regulations. The building of the international Rule of Law will be fundamentally undermined.
Now overtaking communicable diseases as a global problem: draining family and health care systems.

NCDs and COI - the new challenge
Industry needed to change the conversation to get a place at the table

- “We are not like tobacco.”
- “Everyone needs food.”
- “We are not the problem – we are part of the solution...”

Thanks to Tim Lobstein
BIG SNACK pretends to be BIG FOOD

- products not essential to health
- highly processed snacks eaten between meals or replace meals
- such companies not ‘part of the solution’

thanks to Tim Lobstein
Single nutrient fortification – promoting highly processed foods

Stare at a banana all day and you will not see the nutrients it contains.

A quick glance at a package laden with health and nutrition claims immediately inspires confidence – even though many of the important nutrients have been destroyed by the high processing and storage.
Through multi-stakeholder initiatives such as NCD Net and NCD Alliance, and more recently the Global Coordination Mechanism, the NCD agenda is being moved way from WHO control to the United Nations in New York - ostensibly to attract the attention of Heads of State and sectors other than health.
March 2011: attempts to set up a multi-stakeholder WHO Global Health Forum in Moscow prevented

In response to a question on COI – Chan sings: “Getting to know you……”

Civil Society groups working together challenged and stopped this move
UN Political Declaration: COI Coalition

- The Conflict of Interest Coalition was launched at the UN in New York in 2011.

- In a short period of time 161 NGOs, national, regional and global networks (representing some 2,000 NGOs) signed on, including 4 Royal Colleges in the UK.

The aim of the COIC is to safeguard public health policy-making from commercial influence by better identifying, and maximally preventing Cols in the NCD arena.
World Economic Forum is a membership organization.

Its Members comprise 1,000 of the world’s top corporations, global enterprises usually with more than US$ 5 billion in turnover.
The World Economic Forum (WEF) Global Redesign Initiative

- **WEF’s** Global Redesign Initiative proposes that issues are taken off the agenda of the UN system and are addressed instead by ‘*plurilateral, often multi-stakeholder, coalitions of the willing and the able.’*

- WEF envisages a world managed by a coalition of multinational corporations, nation states (including through the UN System) and select civil society organisations.

- **Tedros to speak at WEF next week?**
“Tying corporations up in regulatory straightjackets is unnecessary when companies such as Nestlé already have sound principles and core values.”

Peter Brabeck, Nestle Chair and CEO, AGM 2010. Vice-Chairman, Foundation Board, World Economic Forum.
Self regulation: here today, gone tomorrow

- works only as long as companies want it to
- doesn’t reduce the extent and impact of marketing. In fact the volume can increase
- undermines governments’ resolve to legislate to protect health.
Do multi-stakeholder platforms work?

- Consensus on actions that reduce profits are unlikely
- MSPs lead to a ‘lowering of the bar’ - small incremental changes, voluntary/self-regulation and self-monitoring (according to industry’s own criteria);
- ‘Codes of Conduct’ with no legal power are promoted as adequate ‘governance’;
- Corporate-funded ‘lifestyle’ educational activities predominate
- The offers of funding threaten the independence and watchdog role of the civil society organizations.
• There is increasing evidence that multi stakeholder approaches involving industry are not as effective as some claim.

• The findings of the analysis of **WHO’s Global Coordinating Mechanism** (Preliminary evaluation EB142/15 add.1): *Despite the overall level of activity, the effectiveness of the activities and outputs in support countries’ efforts to accelerate the implementation of the WHO Global Action Plan 2013-2020 were considered to be MODEST … activities are consistently rated more useful than effective*” (ADD LINK to IBFAN and CS comments on the GCM)

• The European Commission’s **Platform for Action on Diet Physical Activity and Health** has been bringing the major food and advertising industries together with NGOs in an effort to reduce obesity rates through voluntary commitments - after over 10 years there has been no evidence of real effect. For 2018 - the meetings are being reduced from 4 to 2 per year -perhaps signalling a disenchantment with the initiative? Better surely to work with town planners, small farmers and public health experts…
Practical examples
The GAIN-sponsored ATNI index rewards actions that are problematic when left to companies whose marketing needs to be controlled:

- promotion of fortified foods
- consumer 'education' about healthy diets and active lifestyle
- engagement with 'stakeholders' in public private partnerships

The safeguards FENSA contains are open to interpretation. For example: what is meant by Para 45 “Engagement where particular caution should be exercised”

Who decides if policies and activities are “in line”?  

90% of violations IBFAN reports comply with Nestle policy!
Which one is WHO - which one Gates?
The WHO publication *The International Code of Marketing of Breast-Milk Substitutes - 2017 Update Frequently asked questions* on the left of the previous slide summarises key WHA Resolutions. It leaves out a key section in *WHA 49.15* adopted in 1996, Para 3 of which urged Member States to ensure that: “monitoring ...is carried out in a transparent and independent manner, free from commercial influence.”

The publication on the right, *Breast-Milk Substitutes Situation Assessment Report*, was compiled by the *Meridian Institute* and funded by a $1.6m grant from the Gates Foundation. It proposes a new Global Monitoring Mechanism to be carried out together with the baby food industry. Click Here for IBFAN comment

“inviting the fox to build a chicken coop”
Waking up in a SUN country
SUN Business Network

- 99 companies by 2015
- Chaired by DSM and includes Ajinomoto, Indofoods, PKL, Renata and DSM
- Globally, 164 companies have made commitments..
- SBN’s business members will reach **1.3 billion** beneficiaries between 2013 and 2020, equivalent to **166 million** each year until 2020.
WHO uses SUN’s faulty COI

- SUN hired the corporate-funded Global Social Observatory (using $1m Gates funding) to develop a COI process. The GSO has poor understanding of CoI concepts.
- For example, they:
  - focus on trust and collaboration rather than caution or arm’s length approaches.
  - confuse conflicts of interest with disagreements and differences in opinions.
  - promote inclusiveness of all ‘stakeholders’ (an industry term)
- GSO now presents itself as an expert in COI!

SUN and GAIN undermining government action

- **2012**: GAIN was found to be lobbying Kenya to weaken their legislation.

- Following the IBFAN critique (published October 2012) SUN started claiming to be ‘government led’ and referred to breastfeeding both before and after 6 months.
The business of malnutrition is thriving

‘You have achieved 60% of what you want’

Gerda Verburg, Coordinator of SUN, Nov 2016
Industry’s top strategic priority is to change traditional food cultures

Babies are the perfect entry point for market-driven solutions.
WHO/FAO Codex: where Global Trading standards are set

Codex standards are used as benchmarks in trade disputes.
IBFAN has attended Codex Alimentarius Commission meetings since 1995 - in order to bring standards into line with WHA Resolutions.

On the current Codex agenda: Biofortification and GM, sweet unnecessary formulas for older babies, products targeting malnourished babies.

40% of delegates are food and related industries.

2017 US and France tried to remove references to WHO Resolutions. (3 of the 4 French Gov delegates were from industry). WHO is very effective and strong in Codex meetings.

IBFAN Press Release: French and US Trade delegations put child health at risk

http://www.babymilkaction.org/archives/14021 To be trustworthy Codex standards should be protected from commercial influence
GAIN in Codex: eggs are no use!
“…the Gates Foundation’s pervasive influence is nonetheless of grave concern both to democratic global health governance and to scientific independence.….”
Building ‘trust’ through education

“All too often the education process is entrusted to people who appear to have no understanding of industry and the path of progress...The provision of education is a market opportunity and should be treated as such”

European Round Table of Industrialists, 1988

Since 1992 Nestlé has been sponsoring nutrition education programs in schools all over the world
Using inequalities, child rights as CSR

**Education**: Manufacturers and distributors of breastmilk substitutes should not be involved in education. Their role is outlined in Para 44 of the Global Strategy - to produce safe products marketed according to the Code.
Ferrero claims to help fulfil Children’s right to play by inclosing a toy inside their chocolates
Questions we need to ask
Questions

• Where did WHO’s wrong COI conception come from? MSs?
• Why was it not corrected when pointed out?
• Is WHO’s leadership aware how this is undermining its mandate to create international rule of law?
• What can be done to stop spreading this wrong CoI conception (via FENSA, the Guide for staff, field testing of COI tools..)
• Should BIG FOOD be «partners» in the solution of food & nutrition related problems?

• Should corporations, venture philanthropies & public-private hybrids be seen as «stakeholders»/non-state actors

• **Should they** be included in public policy discussions on commerciogenic malnutrition and other health matters in the name of «inclusive» governance? Is this an appropriate role for corporations?

• Where are the relevant conflict of interest policies?

• Where are discussions about appropriate roles of actors?
more questions....

• Would a stricter conflict of interest assessment and regulation really lead to the collapse of WHO, risking drying up important “voluntary” financial contributions?

• ... surely lifting the freeze on assessed contributions would allow WHO to focus its attention on the most important issues? (for example helping countries build public health systems - free of COI)
Are we now witnessing and facilitating policy capture of WHO by the food and related industry?
Thank you!

prundall@babymilkaction.org

www.babymilkaction.org
http://www.gifa.org/
www.ibfan.org
For further references, see e.g.


Part: Discussion of the background paper, and 3.2. Breastfeeding: External Presentation, in


IBFAN statement on WHA Agenda item A67/6


Thanks to IBFAN-GIFA and Judith Richter for permission to use their annotated Conflict of Interest slide shows which contain further details and references.
Extra Slides
The revolving door – the case of Janet Voute

Business consultancy - moves to **World Heart Federation** – increases annual income (including $$$ from **World Economic Forum**) by 40% for 8 years and professional endorsements on products

**2008** moves to **WHO** with special responsibility for promoting alliances with industry in particular by means of public-private initiative the UN Global Compact.
Sets up **NCD Net** – with **World Economic Forum** in an Advisory role.

**2010** No cooling off period: **Nestlé, Vice-President global public affairs**. Chairs Nestlé’s Creating Shared Value.

**2011** UN General Assembly – sits as “Civil Society”

Refuses answer the question about Prof Black (see UD46 - next slide. [http://info.babymilkaction.org/update/update46page25](http://info.babymilkaction.org/update/update46page25)
The Lancet Child Survival series

In 2003 breastfeeding topped the list of interventions to prevent under-5 deaths. 2013 much more emphasis on micronutrient-based foods and supplements.

8 of the 10 recommended intervention packages involve products of some kind.

The private sector is also called on to generate ‘evidence about the positive and negative effects of private sector and market-led approaches to nutrition.’
Keep politics out of this picture

National Education Campaign: American Medical Association
In 1949, this painting by Sir Luke Fildes, *The Doctor*, was *mis*used by the American Medical Association (AMA) in their campaign against President Harry S. Truman's proposal for nationalized medical care. 65,000 posters and brochures carried the slogan: *Keep Politics Out of this Picture*. The implication was clear: any involvement of the US Government in medicine would negatively affect the quality of care – the sick child would not get a home visit. The campaign worked and helped raise public skepticism for the reform of health care in the United States. The AMA has continued to argue that health services should be "*provided through private markets, as they are currently.*

How do you choose a partner?

• The UN ‘Roll Back Malaria’ initiative is often used as a model partnership model
• But no one suggests partnering with the mosquito (the cause of the problem, hoping they will change) so why partner with a junk food company?