



IBFAN comments on WHO Consultation: 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)

As one of WHO’s longest-standing partners, IBFAN is pleased to submit the following comments on the above consultation. Our comments are not in the form of a line-by-line commentary – but a general comment about the process being followed with questions about why certain key issues are missing.

Summary

The World Health Assembly has been calling for Conflict of Interest (CoI) safeguards in the infant and young child feeding arena since the adoption of 1986 Resolution 49.15. Subsequent resolutions, along with the *Global Strategy on Infant and Young Child Feeding* (GSIYCF) have set out the two and only appropriate roles for the baby feeding industry: full compliance with the *International Code* and Resolutions and meeting standards of Codex Alimentarius. IBFAN had hoped that with the Resolutions and GSIYCF in place, many CoI should not even arise.

IBFAN has always been appreciative of WHO’s efforts to address COI, including its very recent correspondence with health professional associations.ⁱ We looked forward to WHO creating a tool that would help Member States tackle this difficult subject and were ready to promote it.

Sadly, the documents under discussion are confusing and provide an incorrect understanding of what CoI regulation is. If used as a model (with respect to interactions with corporate actors and private foundations) we fear they will undermine rather than build on CoI regulations that are already in place, opening the door to and legitimising new and existing forms of commercial influence.

Despite containing some good and useful sections, (eg Annex 4 in the Introductory Paper) and warnings about power imbalances ‘*when engaging with non-State entities*,’ the papers indicate that there is a tension between efforts to safeguard policy and programming setting, and the pressure to promote multi-stakeholder platforms, (MSPs), Public Private Partnerships (PPPs) and generally to increase involvement of the private sector. Indeed the draft of WHO’s 13th Programme of Work seems to envisage greater involvement decisions making and governance.ⁱⁱ

The chosen approach follows that of the *Framework for Engagement of Non State Actors*, (FENSA) and the *Scaling Up Nutrition Ethical Framework*. It includes the same ambiguous

language and faulty Conflict of Interest definitions, which serve to accommodate and promote MSPs and PPPs with all their inherent conflicts of interest. Consequently the papers fail to properly address the risks of PPPs and MSPs – indeed MSPs are promoted as ‘transformational’. The fact that such arrangements blur the lines between public and private and create difficulties for national governments when attempting to protect citizens from undue influence, influences that can come not just from corporations, but from venture philanthropies, NGOs and UN agencies.ⁱⁱⁱ

Another glaring omission is the impact this paper will have on 187 Member countries of the global standard setting body, Codex Alimentarius. Codex has so far failed to establish adequate and effective Conflict of Interest safeguards to protect its mandate to protect consumer health and is urgent need of reform. FENSA itself calls for the protection of standard setting.

In short, WHO has missed an important opportunity to provide governments, especially developing countries, where power imbalances are greater, with much needed effective guidance in their efforts to “*Safeguard against possible conflicts of interest in nutrition programmes.*”^{iv}

Incorrect Conflict of Interest definitions

In mirroring the weaknesses contained in the *Framework for Engagement of Non State Actors, (FENSA)* and the *Scaling Up Nutrition Ethical Framework*, the definitions confuse conflicts of interest *within* an institution or person with conflicts *between* actors who have diverging or fiduciary duties, which in the case of corporations is to maximise profits. The muddled definitions are likely to divert attention away from conflicts that exist *within* public actors, between their mandates and prime functions and their secondary interest to be adequately funded.

Throughout the 6-year development of FENSA, IBFAN warned of the risks of such confusion, especially in relation to MSPs and PPPs – controversial schemes through which corporations and venture philanthropies claim the right to participate and shape public health decision-making processes – and, in doing so, succeed in side-lining governments, the UN and peoples’ human rights. The main tenet of such schemes is that the best decisions are those made jointly with all ‘partners’ or by ‘consensus.’

The establishment of the WHO’s *Global Coordinating Mechanism* for NCDs has added to confusion in this area, with the GCM paying little heed to FENSA requirement to “*exercise particular caution...when engaging with private sector entities ...whose policies or activities are negatively affecting human health.*” The GCM has not been a useful model and IBFAN and other concerned NGOs has consistently expressed our worries about its impact.

Codex

IBFAN has attended Codex with the aim of achieving Policy Coherence between WHO and Codex since 1995 when the World Trade Organisation determined that Codex Standards should be the bench marks in Trade Disputes.^v The norm setting procedures of Codex and its guidelines covering National Codex Committees and National Codex Contact Points, are wide open to undue commercial influences. Because of the imbalance of resources and power, businesses and their front groups (often referred to as NGOs) are disproportionately and inappropriately represented at Codex meetings (often sitting on government delegations and sometimes even leading them).^{vi} These industries regularly funds dinners and receptions for participants and contributes to secretarial services. Such lack of transparency and inappropriate involvement, leads to the minimizing of global public health needs and prioritizing regulatory measures to

facilitate trade interests. It has a profound influence on everything that Codex does including the evidence base that is used to decide on the safety of ingredients, additives etc.^{vii}

At the CAC40 in July 2017, the issue of conflicts of interest and governance came up in many of the topics under discussion, including the Codex Trust Fund, the Scientific Basis of Codex, and relations with NGOs.^{viii} During the meeting, WHO consistently highlighted the need for Codex to rise to the challenge addressing nutrition and health and, in particular, non-communicable diseases, stressing the need for policy coherence with WHO. The meeting was reminded that Codex standards are published with the emblems of the parent organizations, WHO and FAO, and that any contradiction between Codex standards and the policies and strategies of its parent organizations should be avoided or appropriately addressed.

IBFAN is keen to maintain its support for WHO's call for policy coherence, but only if WHO itself ensures that adequate COI safeguards are in place. The pressure from the food industries and food exporting countries to override health considerations and prioritise the speeding up of global trade of highly processed foods and processes is evident to anyone who attends Codex regularly. Without strong effective COI safeguards, Member States' efforts to plan optimal nutrition policies, will be undermined, and risky technologies and strategies that contribute to soil-depletion, de-forestation, mono-cropping, land and sea grabbing will continue to flourish. If WHO and FAO are serious about promoting sustainable, bio-diverse wholesome food and environmental resources, the reform and cleaning up of Codex must be a priority. We were concerned to see that during the CAC40 in July 2017, the out-going chair of Codex, summed up several agenda items and side events in a way that favoured inappropriate involvement of the private sector. With the new Governance team now in place, it is a good time to tackle this problem.

Codex is already proposing that funding should be accepted from non-state actors for the Codex Trust Fund *'albeit whilst being conscious of issues around conflict of interest.'* In answer to IBFAN's question about how such funding would be protected from undue commercial or private influence. The WHO representative assured us that such decisions would be made in line with the WHO policies. So once more, clear and strong Guidance is urgently needed to ensure that the integrity of Codex processes is protected and that member states and especially those from developing countries are free to act in the best interest of their citizens.

Monitoring and evaluation

It is essential that any monitoring and evaluation is carried out following the well accepted COI principle that *"no one should be a judge in his own cause."* In the infant feeding context WHA Res 49.15, adopted in 1996, *"urged Member States: to ensure that monitoring the application of the International Code and subsequent relevant resolutions is carried out in a transparent, independent manner, free from commercial influence."* Of concern is a new initiative funded by the Gates Foundation (BMGF) and facilitated by the *Meridian Institute*: the Global Monitoring Mechanism (GMM) IBFAN agreed to be consulted initially but disassociated itself and issued a *Dissent note* when the final report took little account of the views expressed and continued to propose that the baby feeding industry should be included as partners in the monitoring. UNICEF also distanced itself from the final report.

IBFAN has raised similar concerns about initiatives such as the Access to Nutrition Index, FTSE4Good index, that are carried out in close collaboration with the baby food industry. Companies can and do use such indexes to undermine the findings of truly independent monitoring (such as that carried out by IBFAN) while attempting to reposition themselves as credible partners for health. The leading baby food companies now focus on breastfeeding promotion, hijacking of World Breastfeeding Week, in the hopes of diverting attention from ongoing harmful marketing. Through the promotion of voluntary, here today, gone tomorrow initiatives, and small incremental changes to products,^{ix} all under the banner of Corporate Social

Responsibility, government resolve to bring in effective legislation can be undermined and global and national policy agendas subverted. ^x

The claims made by the *Foundation for a Smoke-Free World*, (which will receive approximately US\$80 million annually over the next 12 years from Philip Morris International (PMI), illustrates the complexity of identifying undue influence. The Foundation claims that *independence and transparency are its core principles*, that it has an *independent* research agenda, *independent* governance, ownership of its data, freedom to publish, and *protection against conflict of interest*. The need for clear language and training on CoI is needed if national governments are to recognize, deconstruct and limit the harm caused by such tactics.

ⁱ Health professional associations and industry funding, *The Lancet*, 11th February, 217, Costello et al.

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² Similar concerns were made during 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. The concerns were regarding the redefinition of the CoI concept, the 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. The CoI experts at the TC 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 CoI 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) .

ⁱⁱ *WHO Consultation on the thirteenth General Programme of Work 2019-23* (GPW13) indicates that WHO envisages even greater involvement of the private sector in governance: “*At the same time, it is recognized that global governance has evolved from intergovernmental governance alone, and WHO is also an emerging platform for multi-stakeholder (i.e. government, nongovernmental organizations, private sector entities, philanthropic foundations and academic institutions) governance.*”

ⁱⁱⁱ Birn, A.-E. (2017). “Le philanthropcapitalisme étasunien et les ploutocrates de la santé mondiale.” *Le Courrier*, 19 Septembre, https://m.lecourrier.ch/152698/le_philanthropcapitalisme_etasunien_et_les_ploutocrates_de_la_sante_mondiale
Birn, A.-E. & J. Richter (Forthcoming 2017). U.S. Philanthrocapitalism and the Global Health Agenda: The Rockefeller and Gates Foundations, Past and Present. *Health Care under the Knife: Moving Beyond Capitalism for Our Health*. eds. Howard Waitzkin and the Working Group for Health Beyond Capitalism, Monthly Review Press.
<http://www.peah.it/2017/05/4019/> or <http://www.uio.no/english/research/interfaculty-research-areas/globalgov/globalgov-for-health/news-and-events/news/2017/us-philanthrocapitalism.html>

^{iv} EU Commission Platform on Diet, Physical Activity and Health model is an initiative that after 10 years has failed to curb harmful marketing practices. Small farmers, town planners and teachers are overlooked while time is wasted persuading corporations to produce slightly less harmful junk foods.

^v While governments have the sovereign right and duty to protect health – the prospect of a legal challenge that its laws are a barrier to trade because they are more trade restrictive than those specified in Codex is a clear disincentive. Despite its importance of global health, trade, sustainable development and farming, Codex is too often overlooked, as it is now in this consultation.

^{vi} To give one example, CCNFSU 2011: “*40% of the 268 delegates were food industry, with 59 attending as members of Business Interest NGOs (BINGOS) and 49 included on government delegations – some even heading these delegations. For example, the **Mexican delegation**, which made many industry-friendly interventions, was 100% industry, with US baby food companies **Mead Johnson and Abbott** alongside **Kellogg’s** and **Coca Cola**. **Germany** hosted the meeting and 12 of its 15 delegates were industry, including baby food giants, **Milupa (Danone)** and **Nestlé**, alongside **Coca Cola**, **Kraft**, **Merk**, and others.*”

^{vii} Codex often refers to ill defined terms often used by industry such as ‘generally accepted’ ‘History of safe use’ ‘science-based’ ‘scientifically demonstrated’ rather than the terms recommended by WHO: “*Relevant convincing / generally accepted scientific evidence or the comparable level of evidence under the GRADE classification*”

^{viii} To be trustworthy Codex standards should be protected from commercial influence

<http://www.babymilkaction.org/archives/14021>

^{ix} Nestle is making a big change to Milkybar chocolate <http://www.mirror.co.uk/news/uk-news/nestle-making-big-change-milkybar-10505913>

^x Executive summary of the *Breaking the rules, stretching the rules 2017*, a compilation of marketing practices from around the world that violate the International Code.