

## **WHO Secretariat fails to act on WHA decision on relations with non-state actors**

### **A digest of discussions at the 133<sup>rd</sup> Executive Board on WHO's engagement with non-state actors (NSA)**

29-30 May 2013

IBFAN-GIFA (IV)

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#### Overall comments

The document EB 133/16 informed the discussion of EB member states at the 133<sup>rd</sup> session of the EB on WHO's engagement with non-state actors (NSA). The document proposed an overall approach based on 4 overarching principles, a typology of interactions and a proposed comprehensive system for identifying and managing conflicts of interests that is yet to be developed.

The burning point of the discussion was the issue of differentiation between different types of NSA. Despite previous decisions by MS and their continuous guidance on this matter, no typology of actors was put forward in this report by the Secretariat. Most importantly, the approach proposed by the Secretariat goes counter the decision 65(9) by the WHA which requested two specific and separate policies on interaction with NGOs and the private commercial entities. This feeling was expressed by many MS as they asked for clarification on why the previous decisions had not been reflected in the approach contained in the document, and as they affirmed that they look forward to their concerns being reflected in a refined paper.

In our view, the Secretariat report has deliberately overlooked previous decisions by MS and has chosen not to propose any classification/typology or categories of NSA, thus opting for a position of the major donor countries and not of all MS of WHO.

However, we were pleased with many constructive interventions by MS which addressed these shortcomings, and with the decision of MS to not endorse the document, but instead to '*note*' it, and ask the Secretariat to advance this work taking into account their deliberations at this EB session.

In her closing remarks, the Director-General (DG) confirmed that the Secretariat will work to develop the two policy papers decided by the 65<sup>th</sup> WHA.

#### Differentiation between types of NSA

There was a clear polarisation in the discussion on the issue of differentiation and classification of NSA between some of the industrialized nations on the one hand and the majority of MS representing mainly developing countries on the other.

The majority of MS reinforced the message that they would like to see WHO come up with a classification of NSA. In spite of a framework of overarching principles, there are different types of NSA and MS asked the WHO Secretariat to develop a typology of these, which will also require specific rules for each category of actors. Senegal on behalf of the 47 countries of the African Group

was explicit on this, as were many of the South American countries such as Argentina, Brazil, Panama, Ecuador, and also Egypt, India and Sri Lanka.

Argentina and Ecuador asked the Secretariat to map the actors, and to specify even their country of origin. Particularly important is the need to disclose information on the funding sources of these actors. Brazil, Ecuador and Qatar also asked transparency on those NSA that the WHO is already dealing with through disclosure and a mapping of these relations.

Lebanon affirmed that WHO should not at all engage with those business that benefit from WHO's work. These should be excluded, which will result in strengthened trust in WHO and better cooperation and relations with other actors, such as NGOs.

Some MS drew attention and asked clarifications on the WHA Decision 65(9) which requested the Secretariat to draft two separate policies, one on engagement with NGOs and another on private sector (Zimbabwe, Sri Lanka, India), a process which should result in different elements of the engagement with these two groups (Brazil, Iran).

The response to this question by the Secretariat was very weak and unsatisfactory. It hinted to the evolution of the debate and the need to approach this debate by small steps, thus the development of overarching principles first, which clearly shows the political nature of this debate.

Moreover Zimbabwe raised twice the issue of whether there will also be a policy for philanthropic organizations as was decided by the EB 130 (as reported in the Chairman's summary), but no response was provided either by the Secretariat or by the Chair to explain why/if this item has fallen off the agenda. This issue has been continuously raised by IBFAN and the Democratizing Global Health Coalition (DGH).

Public interest NGOs that took the floor, such as IBFAN/CI and CAI, supported this position and asked for clear differentiation of actors with separate policies to rule their engagement with WHO..

On the other hand, a few developed countries (Switzerland, USA, Canada, and Norway) were not in support of differentiating among NSA. They stated that differentiation was not possible (Norway) or that it was too difficult to separate NSA into categories (USA, Switzerland). Instead this group of countries favored principles of inclusiveness, of working with and having a dialogue with all actors, of openness, of equitable treatment of all actors and flexibility for best expertise.

USA clearly supported the proposed approach based on overarching principles and a typology of interactions and did not support a distinction between category of actors, arguing that it is difficult to tell the real interests of NGOs, and vehemently suggested that even the consultation process planned for September should bring all different actor (academia, civil society, private sector and MS) together.

Clearly, IFPMA, a business front group in official relations with WHO, spoke against differentiation of NSA on the grounds that this would be discriminatory.

The position of the EU, presented by Lithuania, was somehow ambiguous on this point. They stated that while engagement may take different forms depending on the actors, the best strategy is to focus on risks and provide the staff with appropriate tools to manage the risk whenever they interact

with NSA. This was supported by France who suggested that the typology of interactions proposed in EB 133/16 should be combined with the typology of risks proposed in the document EB 133/10 which relates to 'Corporate Risk Register' and talks about 5 major risks (technical/public health; financial; systems and structures; political/governance; reputational). [[NB: These risks, however, as examples illustrate, are of a different nature than those discussed in case of NSA and no allusion to conflicts of interest is made in the document. Analysis of the EU/French suggestion is thus needed.]]

In relation to the typology of interactions, there was one suggestion from Australia to add 'advocacy' as an additional category of interaction.

### **Overarching Principles**

The **overarching principles** proposed in the document EB 133/16 while referring to fundamental issues such as transparency and the need to safeguard WHO from conflicts of interests, were perceived by many as incomplete.

Some of the MS proposed some additional principles. Australia, Argentina, Norway and Brazil proposed an additional principle that would link engagement with NSA with a clear benefit/added value to public health. Zimbabwe proposed to add an additional principle relating to the constitutional mandate of WHO related to the realization of the right to the highest attainable standard of health for all. Canada proposed one additional principle related to openness and inclusiveness.

Countries highlighted the need to preserve the normative integrity and the multilateral and intergovernmental nature of the organizations by safeguarding the norm and standard setting processes.

Norway suggested that the framework for engagement with NSA should not be purely defensive but should underline in its principles the role of NSA as a partner for health and as a valuable resource.

Zimbabwe raised a question in relation to 'vested interest' and argued that it is necessary that WHO addresses commercial interests, which is the key issue in terms of protecting WHO's integrity and evidence-based nature. Therefore Zimbabwe asked for clarification on how commercial interests will be addressed. WHO secretariat responded by saying that the focus is being put on 'vested interest' because it is broader than just commercial interests.

**IBFAN** pointed out that the principles are incomplete and do not draw on the *2009 UN Guidelines* that are intended to serve as a common framework for Collaboration with the Business Sector for all organizations of the UN system. Furthermore, neither human rights nor ethics are highlighted as the overarching principles, and concerns for fairness and equity are presented only as 'added dimensions'. The missing principles identified are:

- Advance WHO's constitutional mandate, prime functions and goals
- Shared values and principles
- Clear delineation of responsibilities and roles.
- Maintain integrity, independence and impartiality of WHO

### **Transparency and Conflicts of interest**

The need to increase **transparency** and address issues related to **conflicts of interest** (Col) was supported by all member states, who underlined the need to preserve the intergovernmental nature of the organization and protect the norm and standard setting processes from any form of influence, in particular commercial influence. This position is shared by IBFAN and other public interest NGOs.

IBFAN would like to see the comprehensive system/framework for identifying and managing conflicts of interest become a reality and WHO start walking the talk on this issue. In a similar way, Brazil clearly stated that mechanisms to deal with Col should be strengthened, and not remain just “declaratory”.

The EU (through Lithuania) and others stressed the need to protect WHO’s decision-making from commercial influence.

Argentina, supported by Surinam, proposed the constitution of an Ethics Committee to identify and manage Col with inputs from MS. The DG responded that constituting such Committee is possible, however it is unclear whether this will be the same Ethics Committee as the one that is under development<sup>1</sup> as part of the Risk Management strategy of WHO.

Senegal, on behalf of the African countries favored strong rules on Col, which should apply throughout WHO levels (national, regional, headquarters). Switzerland and Canada also supported this position.

Norway mentioned that transparency and conflicts of interest are at the same time principles and tools.

The EB 133/16 emphasized the importance for WHO to “avoid confusing strategic relationships with resource mobilization and to prevent them from becoming subservient to resource mobilization”. This principle was supported by several MS (Brazil, Egypt, Albania).

The DG announced, similarly to her WHA opening speech, that she has already started strengthening Col measures, even though nothing has been made public in this respect. She affirmed that she would like to further strengthen Col safeguards by extending disclosure of interests, and asked for assistance by the MS and NSA to increase transparency and help disclose information on actors that WHO is interacting with as not everyone may say the truth.

#### Other issues

The EU demanded that the 24 hour rule applying to the acceptance of statements by NGOs is lifted. However this did not get an immediate response.

According to the EB decision 132(11) two separate consultations will be convened by WHO to support the development of the two policies for engagement with NGOs and the private sector. However, given the suggestion by the USA to have a unique consultation with all NSA, it is unclear how the Secretariat will proceed on this issue.

IBFAN raised an additional point on the proposed typology of interactions as it covers also actors related to **service delivery and procurement functions**, including those that simply make the agency

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<sup>1</sup> It has been renamed to Compliance, Risk Management and Ethics Unit, and is introduced by document EB 133710 which deals with ‘Corporate risk register’.

run. These should not be part of the reform discussion on WHO's governance, but should rather be guided by a service and product procurement policy.

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*Relevant documents:*

- [EB 133/16](#) 'WHO Governance reform: report by the Secretariat'
- [EB 132\(11\)](#): Decisions on reform
- [EB 132/5 Add.2](#) 'Key issues for the development of a policy on engagement with nongovernmental organizations: report by Secretariat'
- [Decision WHA 65\(9\)](#) 'Who reform'
- [EB 130: Chairman's summary](#)
- [EB 130/5 Add.4](#) 'WHO reform: Governance: Promoting engagement with other stakeholders and involvement with and oversight of partnerships'