

J a n u a r y 2 0 1 4

IBFAN Review of the Framework for engagement with non-state actors, EB 134/8

This review was prepared by public-interest organisations whose main goal has been to support WHO in fulfilling its constitutional mandate and functions, of acting as the directing and coordinating authority in international health as well as of regulating powerful economic actors to prevent harm to people's health and lives. As the entire EB134/8 blurs distinctions between governance concerns and technical managerial level, it is unclear to what level the FRAMEWORK document refers to. This makes commenting difficult. Is it governance and other public health decision-making processes, financing or programmatic engagement?

- **Member States may wish to request WHO to more clearly distinguish between these two levels.**

Below are some major issues to be addressed if Member States want to protect WHO's mandate and prevent undue corporate influence while increasing meaningful participation of public-interest actors in WHO's work. WHO needs Member States' guidance as it emerges with increasing clarity that WHO is not able, for reasons that we believe to be of political nature, to take a clear decision on the matter and rather opts for a technocratic approach, which we believe has little chance of success.

OBJECTIVE: From the public health perspective, the Objective of reforming WHO engagements and interactions with external actors should not be centred around 'making better use of resources' but around improving the quality of such engagement to further the fulfilment of the WHO's constitutional mandate while protecting the independence, integrity and trustworthiness of the organisation. The way WHO engages with different categories of external actors must be rooted in the recognition of the fundamentally different nature of public-interest actors guided by a public-health mission and private commercial sector and other actors guided by market profit-making logic (transnational corporations, corporate and venture philanthropic foundations, business associations and front groups, public-private partnerships and other hybrid organisations). Not separating clearly these 2 primary sets of actors amounts to leaving out THE critical step in the reform process.

Decision 65(9) of the 65th WHA was explicit in requesting the Director-General:

- (a) to present a draft policy paper on WHO's engagement with nongovernmental organizations to the Executive Board at its 132nd session in January 2013;
- (b) to present a draft policy paper on the relationships with private commercial entities to the Executive Board at its 133rd session in May 2013;

- **Member States may wish to request WHO to: Take the vital step of clearly recognizing the fundamentally different nature of the two primary sets of actors and approach the policy development process from that position.**

MERIT AND RATIONALE: The EB 134/8 EB still does not contain a clear explanation of the rationale for why WHO needs to or wishes to increase engagement with 'non-state actors'. The chief rationale for redefining WHO's engagement with external actors seems to be contained in the EB 134/9, pg. 3, on Financing dialogue "*to facilitate expansion of the contributor base beyond Member States*". If this is indeed the underlying rationale, the FRAMEWORK should have been centred around safeguarding WHO's mandate and core functions from undue influence.

- **Member States may wish to request WHO to: Clarify the merit and rationale for increased engagement with external actors guided by a market logic.**

Moreover, despite repeated requests from Member States, WHO Secretariat has not yet provided an analysis of what policies and internal procedures are in place; what worked in their implementation and what did not with respect to the safeguarding WHO's independence, integrity and trustworthiness.

Member States may wish to reiterate their request for such an analysis, conducted against the objective we specified above.

Absence of this vital step will make it difficult to determine the amendments that are needed in terms of the policy provisions, if any, as well as improvements in implementation. Without such analysis, establishment of the resource needs, in terms of budgetary and human resources, is equally unworkable. We have learned that the existing safeguarding policies were implemented in an ad hoc manner primarily for lack of resources, including adequate know-how capacity in this area. The resources to be invested in this essential exercise must be weighed against those that might be wasted at WHO and national level (e.g. on the purchase of inappropriate medicines, or as a result of corporate influence on key WHO policies) if conflicts of interest were not adequately addressed.

THE OVER-ARCHING PRINCIPLE fails to refer to the 'contribution to the fulfilment of the WHO's mandate'.

'Inclusiveness' in 4 (e) is a very helpful principle if it refers to increasing participation of public-interest actors, but is extremely problematic whenever it groups together all external actors. The term non-state actors linked to inclusiveness introduces a risk to

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have TNCs included in decision-making processes. TNCs already influence the agenda through their problematic participation as 'NGOs' which we hope will be addressed adequately. Boundaries and management of engagement sections suggest that WHO's prime concern is about its reputation, while the main concerns should be that "engagement with non-State actors must not compromise WHO's integrity, independence, trustworthiness".

THE DEFINITIONS are either unhelpful or truncated.

The definition of NGOs is very unhelpful, blurs lines and allows for profit-making related groupings, such as business associations, to be classified as NGOs. Due to inadequate implementation of the policy in the past, some business-related groupings (e.g. ISDI¹ Croplife International,² the Industry Council for Development,³ ILSI⁴) managed, by conflating the 'not-for profit' status and the 'not working in the interest of profit-making', to receive the status of Official relations with WHO. This should be prevented in the future and the existing situation rectified. **FAO policy definition on NGOs (2013) may be a useful example to follow**⁵.

The **Definition of Private Commercial Entities** uses only the first part of the definition from the Guidelines for interaction with commercial enterprises to achieve health outcomes. It leaves out the critically important second part, that refers to 'a variety of other institutions, including State-run enterprises, associations representing commercial enterprises, foundations not at - arms-length from their sponsors...."

Most importantly, hybrid groupings such as public-private partnerships and multi-stakeholder alliances and various other forms are not at all addressed in the definitions and the FRAMEWORK document.

- **Member states may wish to request WHO to: clarify the question of incorporation of hybrid groupings such as public-private partnerships and multi-stakeholder alliances into the scope of discussions on 'non-state actors'**

The section on Types of interactions is a step back from previous WHO Secretariat's documents.

- **Member States may reiterate their request to: present an exhaustive list of the various types of interactions they engage in to serve as basis for typologies, as needed.**

CONFLICTS OF INTEREST This is perhaps the most alarming section. It illustrates a poor understanding of the concept of conflicts of interest. NGOs have repeatedly submitted to WHO definitions of both individual and institutional conflicts of interest:

"[Individual] conflicts of interest are defined as circumstances that create a risk that professional judgments or actions regarding a primary interest will be unduly influenced by a secondary interest."

"Institutional conflicts of interest arise when an institution's own financial interest or those of its senior officials pose risks of undue influence on decisions involving the institution's primary interests."¹

The EB 134/8 presents a peculiar amalgam that entirely changes the meaning and indicates that WHO is shying away from the central issue: that the conflicts of interest that pose the greatest risk to WHO integrity, independence and trustworthiness are related to interactions with commercial and for-profit interests. WHO also seems to be bowing to powerful economic interests by introducing the misleading arguments of 'intellectual bias' and 'fixed policy position.' We hope that Member States will see this red herring argument and remove these terms from the debate. Otherwise, WHO's work will not be able to benefit from expert contributions if experts are coming with 'fixed' pro-public health position.

- **Member States must recognise the serious shortcomings regarding this central issue of conflicts of interest.**
- **Member States may wish to request WHO to organize, before the 2014 WHA and as part of the further consultations mentioned in Para 28, an expert meeting on Conflicts of interest with participation of public-interest NGOs to discuss development of a comprehensive framework of safeguards to adequately and effectively address conflicts of interest so that the two policies (NGOs and private commercial sector) are developed on a sound basis.**
- **Member States must ensure that WHO emerges from this reform process as the prime actor in global public health and not as an agency with weakened position in public health acting under influence of actors who are guided by a market logic.**

¹ International Special Dietary Foods Industries (ISDI) represents the baby feeding industry.

² CropLife International represents companies such as BASF, Bayer CropScience, Dow Agrosciences, DuPont, FMC, Monsanto, Sumitomo and Syngenta

³ The International Council for Development (ICD) consists of food companies such as Nestlé, Mars, Unilever and Ajinomoto. <http://icd-online.org>

⁴ ILSI Board of Trustees includes Nestlé, Coca Cola, Kellogg, Pepsi, Monsanto, Ajinomoto, Danone, General Mills, http://www.ilsli.org/Documents/ILSI_AR_2012.pdf

⁵ NGOs are formally constituted, legally registered, free from commercial interests, non-profit organisations that provide services, information and expertise, sensitize public opinion, and conduct advocacy activities" (FAO, CL146/8)